No. 87-2048

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

TEXACO INC.,

Petitioner,

—*vs.*—

RICKY HASBROUCK, d/b/a RICK'S TEXACO, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JUNE 14, 1988
CERTIORARI GRANTED JUNE 12, 1989

515 PP

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The following opinions have been omitted in printing the Joint Appendix because they appear in the Appendix to the Petition for a Writ of Certiorari:

HASBROUCK V. TEXACO
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
NO. C-76-27

RELEVANT DOCKET ENTRIES
IN THE DISTRICT COURT

Docket No.	Date	Description
	1976	
1	1/30	Filed Complaint for Money Damages for Unlawful Price Discrimination, Unfair Methods of Competition, and Injunction
15	8/10	Filed Answer of Defendant Texaco Inc. to Plaintiffs' First Amended Complaint with Affidavit of Mailing
	1977	
91	6/15	Filed Supplemental and Amended Complaint

1978

111 8/3 Filed Answer of Defendant Texaco, Inc. to Plaintiffs' Supplemental and Amended Complaint

1979

188 1/22 Filed (Pltf) Motion for Partial Summary Judgment Striking Texaco's Ninth and Eleventh Affirmative Defenses ("Functional Discount" and Different Line of Commerce) Advisement 5/2/79 S/Callister

189 1/22 Filed Memorandum in Support of Plaintiffs' Motion for Partial Summary Judgment Striking Texaco's Ninth and Eleventh Affirmative Defenses ("Functional

Discount" and Different Line of Commerce)

205 1/24 Filed (Pltf) Motion to Dismiss or, in the Alternative for Partial Summary Judgment Striking, Texaco's Ninth and Eleventh Affirmative Defenses ("Functional Discount" and Different Line of Commerce) Advisement 5/2/79 S/Callister

251 2/16 Filed Reply Memorandum of Plaintiffs in Support of Motion to Dismiss or, in the Alternative, for Partial Summary Judgment Striking, Texaco's Ninth and Eleventh Affirmative Defenses ("Functional Discount" and Different Line of Commerce)

425	8/31	Filed Special Verdict Form on Claims of:

Vincent Lies	$100,161.68
Harold Hardwick	42,808.83
Alva N. Blue	44,214.82
John W. Bevan	140,827.35
Ricky Hasbrouck	25,736.75
Henry Rigg	75,827.25
Gene C. Robinson	40,347.51
James O. Sills	54,532.98
Ralph O. Webber	14,487.82
Albert E. Allen	166,916.03
Clifford Robinson	105,568.98
Ricky A. Rigg	38,054.15

	1980	
478	3/31	MEMORANDUM DECISION (motion for judgment notwithstanding the verdict is granted; def's motion for new trial is denied; neither party is awarded attorneys fees)

HASBROUCK V. TEXACO
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EASTERN DISTRICT OF WASHINGTON
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1980

478 3/31 MEMORANDUM DECISION (motion for judgment notwithstanding the verdict is granted; def's motion for new trial is denied; neither party is awarded attorneys fees)

(Callister) cc: Attorneys COB-32-2

479 3/31 ORDER Granting Judgment Notwithstanding Verdict (deft's motion for new trial is denied; deft's motion for mistrial denied; neither party awarded Attorneys fees & each should bear own costs) (Callister) COB-32-3

1982

504 3/5 9CCA JUDGMENT (judgment of D.C. is affirmed in part, reversed in part, and remanded in part)

505 3/30 9CCA JUDGMENT (affirmed in part, reversed in part, and remanded in part; costs in this court in favor of

appellant (Hasbrouck) and against apls.: Brief for appellant (Hasbrouck) $1,081.66

506	12/22	SUPREME COURT ORDER (petition for writ of certiorari is denied) cc: JLQ
	1984	
590	12/21	MOTION for Pretrial Determination of Legal Sufficiency of Pltfs' Proof of Damages (Pltfs)
591	12/21	BRIEF in Support of Pltfs' Motion for Pretrial Determination of Legal Sufficiency of Damage Proof

	1985	
595	1/4	TEXACO'S MOTION to Strike Pltfs' Pre-Trial Motion for Determination of Legal Sufficiency of Damages
596	1/7	NOTICE of Motion for Pre-trial Determination of Legal Sufficiency of Pltfs' Proof of Damages (Oral Argument Requested) (#590)
633	4/1	AGREED PRETRIAL ORDER (JLQ) cc: Atty Whaley & Nielsen
637	4/9	ORDER on Pre-Trial Motions (Motion to Exclude the Cost Justification Defense at this time is denied; pltfs' motion to exclude "real estate costs" is granted; pltfs' motion re: testimony

of Ronald Harper is granted; pltfs' motion to exclude deft's immunity defense is granted; pltfs' motion for pre-trial determination of legal sufficiency of pltfs' proof of damages is denied; deft's motion to exclude testimony of Judith O'Brien is denied with leave to renew at trial; deft's motion in limine re background and personal lives of pltfs is denied) (JLQ) cc: Attorneys

684	6/5	REPORTER'S TRANSCRIPT of Proceedings (6/4/85)
685	6/6	REPORTER'S TRANSCRIPT of Proceedings (6/5/85)

688	6/7	REPORTER'S TRANSCRIPT of Proceedings (6/6/85)
692	6/8	REPORTER'S TRANSCRIPT of Proceedings (6/7/85)
693	6/10	REPORTER'S TRANSCRIPT of Proceedings (6/8/85)
697	6/11	REPORTER'S TRANSCRIPT of Proceedings (6/10/85)
702	6/12	REPORTER'S TRANSCRIPT of Proceedings (6/11/85)
705	6/13	REPORTER'S TRANSCRIPT of Proceedings (6/12/85)
710	6/14	REPORTER'S TRANSCRIPT of Proceedings (6/13/85)

713 6/15 REPORTER'S TRANSCRIPT of Proceedings (6/14/85)

714 6/17 REPORTER'S TRANSCRIPT of Proceedings (6/15/85)

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718 6/19 REPORTER'S TRANSCRIPT of Proceedings (6/18/85)

720 6/20 REPORTER'S TRANSCRIPT of Proceedings (6/19/85)

721 6/20 INSTRUCTIONS as Given by the Court

722 6/21 REPORTER'S TRANSCRIPT of Proceedings (6/20/85)

731 6/22 VERDICT For Pltfs as follows:

	Lost sales & profit on gasoline	Lost sales & profit on backroom business	Total damages
Albert E. Allen	$74,000.00	$3,600.00	$77,600.00
John W. Bevan	55,700.00	7,500.00	63,200.00
Alva N. Blue	34,400.00	2,200.00	36,600.00
Harold C. Hardwick	34,900.00	7,600.00	42,500.00
Rick Hasbrouck	11,700.00	2,400.00	14,100.00
Vincent Lies	34,400.00	5,000.00	39,400.00
Henry Rigg	42,100.00	6,500.00	48,600.00

Ricky A. Rigg	22,000.00	00.00	22,000.00
Mollie J. Robinson	42,900.00	4,600.00	47,500.00
Gene C. Robinson	22,700.00	5,400.00	28,100.00
James O. Sills	22,000.00	00.00	22,000.00
Ralph O. Webber	8,300.00	00.00	8,300.00

Dated this 22nd day of June,
1985. /s/ Margie Williams,
Presiding Juror

736 6/25 JUDGMENT on Jury Verdict (pltf Albert E. Allen recover of deft Texaco $232,800., being jury's verdict of $77,600. trebled, with interest at 7.7%; pltf John W. Bevan recover of deft Texaco $189,600., being the jury's verdict of $63,200. trebled, with interest at 7.7%; pltf Alva N. Blue recover of deft Texaco $109,800., being jury's verdict of $36,000. trebled, with interest at 7.7%; pltf Harold C. Hardwick recover of deft Texaco $127,500., being the jury's verdict of $42,500. trebled, with interest at 7.7%; pltf Rick Hasbrouck recover of deft Texaco $42,300., being the

jury's verdict of $14,100. trebled, with interest at 7.7%; pltf Vincent Lies recover of deft Texaco $118,200., being the jury's verdict of $39,400. trebled, with interest at 7.7%; pltf Henry Rigg recover of deft Texaco $145,800., being jury's verdict of $48,600. trebled, with interest at 7.7%; pltf Ricky A. Rigg recover of deft Texaco $66,000., being jury's verdict of $22,000. trebled, with interest at 7.7%; pltf Mollie J. Robinson, Personal Representative of the Estate of Clifford N. Robinson, Deceased recover of deft Texaco $142,500., being jury's verdict of $47,500. trebled,

with interest at 7.7%; pltf Gene C. Robinson recover of deft Texaco $84,300., being jury's verdict of $28,100. trebled, with interest at 7.7%; pltf James O. Sills recover of deft Texaco $66,000., being jury's verdict of $22,000. trebled, with interest at 7.7%; pltf Ralph O. Webber recover of deft Texaco $24,900., being jury's verdict of $8,300. trebled, with interest at 7.7%; all costs and attorneys fees to be determined by the Court. COB-62-12 cc: Attorneys

739	7/5	DEFT'S MOTION for Judgment NOV or, in the Alternative, a New Trial 8/14/85 S/JLQ Den.
784	9/11	MEMORANDUM OPINION & ORDER Denying Motion for JNOV or New Trial (JLQ) (denying Texaco's motion for new trial or JNOV) cc: attys
804	10/10	NOTICE OF APPEAL (deft atty Nielsen) cc's 9CCA, attys Whaley, Ebel, Nielsen, Robinson & Sacks [w/affidavit of mailing]

RELEVANT DOCKET ENTRIES IN THE COURT OF APPEALS

HASBROUCK V. TEXACO
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
No. 80-3160

Docket No.	Date	Description
	1981	
	12/14	Opinion of the Court of Appeals
	1982	
	2/16	Order denying Texaco's petition for rehearing

TEXACO V. HASBROUCK
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
No. 85-4225

Docket No.	Date	Description
	1987	
	10/26	Judgment
	1988	
	3/17	Order and Amended Opinion

HASBROUCK V. TEXACO
AGREED PRETRIAL ORDER
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
NO. C-76-27

A pretrial conference was held in the above-entitled cause at Spokane, Washington, on February 1, 1985, with Judge Justin L. Quackenbush presiding. Plaintiffs were represented by Robert H. Whaley, and defendant Texaco Inc. ("Texaco") by Wm. Fremming Nielsen and Mark D. Litvack, their respective attorneys of record. The following pretrial order has been formulated and settled as follows:

NATURE OF PROCEEDINGS AND

STATEMENT OF JURISDICTION

Plaintiffs' Supplemental and Amended Complaint, filed herein on June 15, 1978, alleges causes of action under the Robinson-Patman Act, 15 U.S.C. § 13(a), the Washington Unfair Practices Act, Revised Code of Washington, Chapter

19.90, and the Washington Consumer Protection Act, Revised Code of Washington, Chapter 19.86. The causes of action based upon violations of state law were discussed in the prior trial of this case. This case is now proceeding to trial only under the federal cause of action, being 15 U.S.C. § 13(a). This Court has jurisdiction of these claims by virtue of 15 U.S.C. § 15 and 28 U.S.C. § 1332.

ADMITTED FACTS

The following facts are agreed upon by the parties and require no proof:

1. Texaco is an integrated petroleum company, incorporated under the laws of Delaware and engaged in the refining, distribution and marketing of petroleum products, including gasoline.

2. Texaco was and is engaged in the marketing of petroleum products in

parts of the United States and in certain foreign countries.

3. In the Spokane area, Texaco sold gasoline to plaintiffs, to other persons who have resold Texaco gasoline at retail, to John Dompier Oil Company ("Dompier") and to Gull Oil Company ("Gull").

4. The gross profit earned from sales of gasoline by a person who sells gasoline at retail is a function of the number of gallons he sells times his gross profit margin per gallon.

5. During all or part of the period January 1, 1972 through April 1981, hereinafter the relevant time period, each of the plaintiffs was a citizen and resident of the State of Washington and operated a retail gasoline service station in Spokane County, Washington.

6. Each of the plaintiffs operated Texaco retail gasoline stations for the following periods:

Operator	Date	Place
RICK HASBROUCK (Rick's Texaco)	6/71 - 10/6/75	Driscoll & "C" St.
JAMES O. SILLS (Jim's Springhill Texaco Service)	10/61 - 10/29/78	Garland and Ash
ALVA N. BLUE (Al Blue's Texaco)	7/71 - 4/30/81	Maple and Rowan
JOHN W. BEVAN (Bevan's Texaco and Towing and Bevan's Northwood Texaco)	6/67 - 6/1/78 8/56 - 11/30/75	3rd & Lincoln Wall & Houston
RICKY A. RIGG (Five Mile Texaco)		West Francis
CLIFFORD N. ROBINSON (Robinson's Freeway Texaco)	1955 to 9/77	I-90 & Medical Lake

Operator	Date	Place
GENE C. ROBINSON (Hillyard Texaco)	1956 - 1979	Market & Wellsley
ALBERT E. ALLEN (Van's Texaco)	1966 - 5/19/81	N.W. Boulevard
HAROLD C. HARDWICK (Harold's Texaco Service and Towing)	10/59 - 3/78	North Division
HENRY RIGG (Hank's Texaco)	1954 - 1980	Sharp & Monroe
VINCENT LIES (Lies Texaco & U-Haul)	1968 - 5/24/81	3rd & Maple
RALPH O. WEBBER (Webber's Auto Repair & Service Station)	9/65 - 9/79	Hamilton & Baldwin

7. During the above periods of time, each of the plaintiffs purchased regular, premium and/or unleaded gasoline from Texaco and resold said gasoline at retail.

8. Throughout the relevant time period, Dompier purchased regular, premium and/or unleaded gasoline from Texaco, and under its contract with Texaco, Dompier was licensed to sell all of this gasoline under the Texaco trademark.

9. Throughout the relevant time period, Gull purchased regular, premium and/or unleaded gasoline from Texaco. However, during the entire relevant time period Gull never sold gasoline under the Texaco trademark.

10. Throughout the relevant time period, Texaco directly supplied branded gasoline to plaintiffs at various times.

11. Throughout the relevant time period, Texaco supplied branded gasoline to Dompier at various times.

12. Throughout the relevant time period, Texaco supplied unbranded gasoline to Gull at various times. The prices charged by Texaco to Gull for such gasoline varied from time to time. The price charged to Gull for such gasoline was never static.

13. During the relevant time period, Dompier supplied gasoline to retail service stations at various times and prices.

14. During part of the period January 1, 1972 through April 1981, Dompier supplied gasoline to car washes operated by Red Carpet at various times and prices.

15. Throughout the relevant time period, the prices Dompier charged to the retail service stations and car

washes to which Dompier supplied gasoline were set by Dompier.

16. Throughout the relevant time period, Gull supplied gasoline to retail service stations at various times and prices.

17. Throughout the relevant time period, the prices Gull charged to the retail service stations to which it supplied gasoline were set by Gull.

18. Gull resold part of the gasoline it purchased from Texaco at retail service stations owned by it, and also resold part of the gasoline it purchased from Texaco to others who resold the gasoline at retail.

18A. Before July 1, 1970, Gull was supplied by Phillips Petroleum in Eastern Washington.

19. The gasoline which Texaco sold to plaintiffs and Dompier Co. was, in

all physical and chemical respects, of like grade and quality.

20. The Texaco Retailer Tankwagon price (RTW) is the price which Texaco charged retail service station dealers to whom it sells directly, absent any allowances off the RTW.

21. Since at least 1968, Dompier Co. has purchased gasoline from Texaco at prices which were lower than Texaco's RTW.

22. Since at least 1970, Gull Oil Co. has purchased gasoline from Texaco at prices which were lower than Texaco's RTW.

23. Texaco also paid Dompier Co. an allowance, termed a "hauling allowance," for each gallon of gasoline which Dompier Co. purchased from Texaco, as follows:

Time Period	Amount of Hauling Allowance per Gallon
June 1, 1971–April 2, 1972	.00446
April 3, 1972–August 31, 1972	.00445
September 1, 1972–August 12, 1973	.00478
August 13, 1973–March 9, 1974	.00511
March 10, 1974–July 19, 1974	.00544
July 20, 1974–August 31, 1975	.00587
September 1, 1975–June 11, 1976	.00616
June 12, 1976–August 31, 1976	.00644
September 1, 1976–July 8, 1977	.0067
July 9, 1977–April 14, 1978	.00714
April 15, 1978–June, 1979	.00724

Texaco will determine the hauling allowance for the period thereafter and the parties will agree to that amount.

24. The hauling allowance has been paid by Texaco to Dompier Oil Co. for the time periods indicated above.

25. The following were the approximate differences between the contract prices of Dompier Co. and Texaco's Retailer Tankwagon price (exclusive of general allowances in effect during the period January to December, 1972):

Time Period	Amount of Price Differences per Gallon Sky	Fire	Non-Lead
January 1, 1972-May 22, 1973	*.0395	*.0395	
May 22, 1973-July 31,1974	*.0365	*.0365	
August 1, 1974-December 2, 1975	*.0395	*.0395	
December 3, 1975-January 28, 1977	.0365	.0365	.0385
January 28, 1977-June 1979	.0265	.0265	.0285

* All include .003 special allowance. None of these figures reflect the .01 allowance to Allen, Rigg and Weber.

The parties will agree to the price for the period thereafter.

26. The following were the approximate differences between the prices paid by Gull and Texaco's Retail Tankwagon price:

Time Period	Amount of Price Differences per Gallon		
	Fire	Sky	Nonlead
January, 1973–June 12, 1974	.0525	.0575	--
June 13, 1974–July 9, 1974	.0525	.0575	.0575
July 10, 1974–June 9, 1977	.0525	.0575	.0545
June 10, 1977–July 18, 1979	*	*	*

* Gull prices changed to discount off DTW as follows: Sky: .0298; Fire: .0173; Non-Lead: .0173. The discount off of RTW based on new policy for Gull as follows: Sky: .0593; Fire: .0438; and Non-Lead: .0458.

27. During the time period (from January 1, 1972, through October 30, 1972) Texaco extended "temporary competitive allowances" to plaintiffs, Dompier Oil Co. and Gull. These competitive allowances varied. These temporary competitive allowances also had the effect that in every instance in which the allowance was granted, it reduced the recipient's buying price for the gasoline it purchased from Texaco.

28. As of April, 1981, Dompier Oil Co. operated ______ Texaco-branded stations in the Spokane area.

29. During the relevant time period Dompier Oil Co. supplied the following service stations with Texaco-branded gasoline:

Location	Dates
North 502 Freya	
North 3306 Monroe	
Mission & Magnolia	

Location	Dates
North 2924 Market	
East 303 Third Avenue	
Hayford Road & Highway 2, Airway Heights	
North 2527 Division (Red Carpet No. 1)	
E. 7208 Sprague Avenue (Red Carpet No. 2)	
East 303 Third Avenue	
Newport Highway	
North 7902 Division	
Hayford Road & Highway 2, Airway Heights	
Red Carpet No. 1, North 2527 Division	
Red Carpet No. 2, East 7208 Sprague	
North 2924 Market	
Mission & Magnolia Boulevard	
North 502 Freya	
North 3306 Monroe	

30. During the relative time period Gull supplied the following stations with gasoline:

Location	Dates
East 620 Francis	
Newport Hwy., Mead	
East 13819 Trent	
East 511 Francis	
North 2103 Division	
East 5204 Sprague	
North 1521 Argonne	
South 2805 Grand	
East 8006 Sprague	
East 4422 Sprague	
South 3728 Grand	
Newport Hwy., Mead	
East 936 Sprague	
1106 North Pines Road	
East 706 Main Street, Cheney	
Route 1, Medical Lake	

31. As of June, 1979, all Gull stations in Spokane were operated by

individuals who were paid a commission by Gull for each gallon of gasoline sold through the station.

32. During the relevant time period, Gull was solely responsible for establishing the retail price at which gasoline was sold to the public at its commission stations.

33. Throughout the relevant time period, Gull had no bulk plant in the Spokane area.

34. During the relevant time period, Texaco granted a one cent allowance to A. Allen, H. Rigg and R. Webber.

* * *

HASBROUCK V. TEXACO

TRANSCRIPT OF PROCEEDINGS

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

NO. C-76-27

[ALBERT E. ALLEN, R. 405]

* * *

Q. Okay. At this time, during the 1970's let me say generally, to your observation, was price an important factor in selling gasoline in Spokane?
A. Definitely.

Q. Okay. If you had had a buying price at the time of this competition from the Dompier stations emerged, you had a lower buying price, let's say three or four cents lower, what would you have done that-- A. I would have met the competition.

Q. And specifically what does that mean, you would have passed it on to the retailing public? A. If it would have

been necessary for me to drop my price to meet competition, I would have done so.

Q. Do you have any judgment as to whether you would have done that, that would have had an effect on the number of gallons you were able to sell?

A. Yes, it would have.

Q. What would that effect have been?

A. Pardon?

Q. What effect would that have had?

[Allen, R. 406] **A.** On my gallonage?

Q. Yes. **A.** I would have kept it or gained.

Q. You didn't have a lower buying price. Did you try to do anything else in order to help you compete with these other stations? **A.** Yes, I did. In 1976 I think it was that I--my brother and I contacted Safeway and we bought--or we bought three trucks and I was going to take one. Then I contacted

Leland Trailers and they located a trailer for me. And I thought that if I hauled my own gasoline, I could compete with Dompier Oil Company, to be frank with you. And after I had made those arrangements, I went out and I talked to Morrie, and he told me I definitely could not get my gasoline at the rack.

Q. Let me just stop you here because I think you are using some terms that people may not be familiar with. Morrie again is Mr. Peterson? **A.** Morrie Peterson at the bulk plant, yes.

Q. And you bought, you said, a truck and trailer. Is that one of these great big rigs to carry gasoline? **A.** Yes, it is.

Q. And you said you wanted to buy it at the rack. **[Allen, R. 407]** What do you mean by that? **A.** That is at the bulk plant, at the pipeline.

Q. So you wanted to take your truck that you were buying right out to the pipeline terminal and get the gasoline yourself and take it to your station? A. Yes, I did. At the volume of gasoline that I used to sell, it would have been profitable for me.

Q. Were you with your pricing philosophy, did you sell a lot of gallons of gasoline in the early Seventies? A. Yes, I did, I sold 100,000, 120,000, in the early--late Sixties, and early Seventies.

Q. Did you sell that much after these other stations--

THE COURT: Excuse me just a moment. 100,000 to 120,000 how often?

THE WITNESS: A month.

THE COURT: Well, speak into the--

A. A month.

Q. (BY MR. EBEL) Excuse me. I thought you had said that. All right, did you

sell that much in the period of the early Seventies when you began to be faced with this competition from these other stations we have been talking about? A. No.

[Allen, R. 408] Q. Let's go back to the truck and trailer a moment. Why did you think that being able to take your truck out to the pipeline terminal was going to help you get a better price? A. Well, if I could have got it at the three or four cents cheaper, I could have met competition.

Q. Did John Dompier Oil Company pick up its gasoline at the terminal? A. Yes, they do.

Q. And Texaco would not permit you to do this? A. They would not permit me to do that.

* * *

[RICKY RIGG, R. 488]

* * *

Q. Mr. Rigg, your name is Rick, is that correct? **A.** Right.

[Rigg, R. 489] Q. You are the son of Hank Rigg? **A.** Yes, sir.

Q. Have you worked with your father in the service station business in the past? **A.** Yes, I have.

Q. Would you tell the jury briefly about the time that you worked with your father and point out the station that you worked at? Could we move to the first map and look at the map of Spokane? **A.** When I first started working with my father?

Q. Yes. I would like you to point the station out to the jury and tell us when you started working with your father. **A.** My mother said I started washing hubcaps because I couldn't reach the

windows when I was real little at Tidewater, Greenacres.

Q. When did you start working on Monroe Street and Sharp? **A.** Okay. My dad acquired a station in 1954 on Monroe and Sharp. Do you want me to point it out?

Q. Yes, would you point it out to the jury? **A.** Approximately right there (indicating). We started in 1954.

Q. When did you start working there? **A.** Off and on while I was in school, after school, **[Rigg, R. 490]** summer vacations, then I started full time approximately '65, working full time, '64-65.

Q. And you worked in his station full time until when? **A.** Until January 1973.

Q. Then you moved into your own station? **A.** I moved to Francis and Ash.

Q. When you worked with your father in the station on Monroe Street. Would you tell the jury briefly what kind of

station it was, describe it for them? **A.** It was a full service Texaco. We had--we sold gas, naturally. We did back room work, lube room work, we serviced cars, lube, oil filters, tune-ups, brakes, light repair work. We didn't do engine overhaul or stuff like that, we just did light repair work.

Q. You left your father's station in 1973? **A.** Correct.

Q. Were there any changes in the market you noticed in the early Seventies while you were working at your father's station? **A.** Yes, there was.

Q. Would you tell the jury what change you noticed? **A.** The change I noticed was the Texaco at the foot of Monroe Street hill, Alice, opened, and they were **[Rigg, R. 491]** selling gas for less than we could. In fact, when they first opened up, it was three-tenths of a cent over our buying price.

Q. Three-tenths of a cent above your buying price? **A.** Right.

Q. Do you recall that station opening up? **A.** Yeah, I do because I was talking to Tom Bollinger from Texaco because my customers had heard through the grapevine--

MR. NIELSEN: Your Honor, I object to any customer grapevine conversation.

THE COURT: Sustained.

Q. (BY MR. WHALEY) You learned that there may be a station opening up on Monroe? **A.** I learned that there was going to be a station opened on Monroe. I went past it on my way to work. I went past it every day on my way home from work.

Q. Did you then have a conversation with Mr. Bollinger? **A.** Yes, I had a conversation with Mr. Bollinger. I wanted to find out--

Q. Let me ask you the questions and you answer me, and I can get the necessary question. You had a conversation with Mr. Bollinger, is that correct? A. Yes, I did.

[Rigg, R. 492] Q. Who is Mr. Bollinger? A. Bollinger was--I believe his title was district manager of Texaco in the Spokane area.

Q. About what time did you have that conversation with Mr. Bollinger? A. It was in the early Seventies.

Q. Can you tell us the conversation you had with Mr. Bollinger, what was the substance of the conversation? A. I asked him if that was going to be a Texaco or not. He told me definitely it was not going to be a Texaco service station.

Q. And then do you remember the station opening up? A. Yes, I did.

Q. What kind of station was it? A. It was Texaco.

Q. Did you notice the price posted at that station? A. It was less than mine.

Q. And do you remember how it was in relationship to the price you were paying for gasoline? A. It was less than mine.

Q. Do you have any recollection of how close to--

MR. NIELSEN: Your Honor, I object unless we have more pinpointed as to time and dates. He is being very general.

THE COURT: I will allow you to examine on [Rigg, R. 493] cross. Overruled.

Q. (BY MR. WHALEY) I am talking about when the station opened up. A. Right, which was in the early Seventies, I believe.

Q. And about what was the difference between their sale price and your buying price? A. The difference in their selling price and my buying price?

Q. Yes. A. When it first opened it was three-tenths of a cent over my buying price.

Q. Did you ever notice any customers of yours that traded at that station? A. Yes, I have.

Q. Would you tell the jury what you observed about your customers in that station? A. Okay. Because I drove past it going to work and drove past it going home from work, I noticed several of my customers at different intervals. Specific names I can't come up with now that were purchasing product from that Texaco.

Q. Did you ever have any customers come into your station and complain or tell you about the price at the station up

the street? [Rigg, R. 494] A. Yes, I had many.

Q. Would you show the jury where your station is in relationship to the station farther up the street at the base of the Monroe Street hill? A. I am just below them. That's where I am at, and they were right at the foot of the Monroe Street hill, approximately, I believe, right about in here.

Q. Were they on the same side of the street that you were? A. Same side.

Q. Did they have the same kind of Texaco sign? A. Same kind of sign.

Q. Did they take the same credit card? A. They took the same credit card.

Q. Did the station pump the gas for the purchaser? A. They pumped the gas.

Q. Did you ever try while you were in the Monroe Street station to price close to the price of that station up the

street? A. I continuously tried to price as close as I could to it.

Q. How close did you try to price to that station in the early Seventies? A. One day I went to work I was upset about their price, I got my father, I sat down with him and we **[Rigg, R. 495]** discussed about taking our dealer tank wagon price we paid, I added our rent, anything into that price and posted that at the gas pumps.

MR. NIELSEN: Your Honor, if we could have dates it would help. I object to just general statements unless we can pinpoint them with a little better foundation.

THE COURT: Yes, you might attempt to set the time frame.

Q. (BY MR. WHALEY) Until I tell you further, I am going to be talking about the early 1970's. A. Early 1970's.

Q. That would be before 1973. A. Correct.

Q. During that period of time did you ever try to price competitively with that station? A. I continually tried to price competitive.

Q. The time that you talked about dropping your price down to your purchase price, plus your rent, did that occur prior to 1973? A. Yes.

Q. Could you make any money charging at your purchase price plus your rent? A. No.

Q. Did you have any profit when you did that? **[Rigg, R. 496]** A. No, absolutely none.

Q. When you otherwise priced in the early 1970's, pre-1970, how close in general did you try to stay to that station? A. What I would do is take my dealer tank wagon price, add the rent to

it, and then add three cents for profit margin.

Q. So, you were trying to operate on a three cent profit margin? **A.** Right.

Q. What happened to your gasoline sales during this period of time?

MR. NIELSEN: Your Honor, sorry to interrupt. He is talking about the early 1970's, apparently before 1973, and he is talking about prices and his efforts to compete. It's not relevant because that precedes the damage period in this case, and we are going far beyond just background introductory type evidence. It concerns me for that reason.

THE COURT: The damage period is--

MR. NIELSEN: It starts in '72.

THE COURT: Yes. What date?

MR. WHALEY: It starts on January 30, 1972.

THE COURT: Why don't you focus the witness's attention to those dates?

[Rigg, R. 497] MR. WHALEY: Your Honor, I think I have to show a pattern that begins before that because that's what begins the--

THE COURT: Yes. I will be instructing the jury that the damage period is limited to the period commencing January 30, '72, but I will allow some historical information as to what went on at Alice and Monroe in comparison to other stations.

Q. **(BY MR. WHALEY)** Mr. Rigg, did you later on change stations and open another station? **A.** Yes, I did.

Q. Would you tell us how you came about opening another station? **A.** Well, I was trying to--I lived up in the Francis--looking in the Francis area, watched that station up there. I lived in that area. I lived by Shadle at that

time. It looked like a fairly nice residential area and a couple busy streets. One of the Texaco sales reps came to me and told me that the station at Francis and Ash was available. I told him I would take it.

Q. Did you move up there and start a full service station? **A.** Yes.

Q. Did you at that point consider the station on the **[Rigg, R. 498]** Monroe Street hill also to be in competition with you? **A.** Yes, I did.

Q. What did you consider your competitive area to be when you were at the Monroe Street station and when you moved up to Francis? **A.** My competitive area?

Q. Yes, sir. **A.** All of Spokane.

Q. Did you have any particular competition that you thought was more significant than others? **A.** The competition that I thought which would

be more significant would be my same brand, took the same credit card and sold the same products.

Q. So that would include Mr. Allen, for instance? **A.** Correct.

Q. Or Mr. Bevan? **A.** Correct.

Q. Mr. Lies? **A.** Right.

Q. When you were in that station, how did you do running it as a full-serve station? **A.** Do you mean did I feel like I was successful?

Q. Did you have to change the operation? **A.** As a full service? Okay. I ran that station basically the same way we did the Monroe Street.

[Rigg, R. 499] Q. Did you end up having to change the operation of the station? **A.** Towards the end I changed it to self-serve.

Q. Tell the jury how you came to change the station to a self-serve station. **A.** I figured by changing to self-serve,

I would be able to cut my overhead down so that working on a small margin I would be able to survive. I let all my help go so I did it all by myself. I believe I had one part-time man for Sundays, and I changed the lube rooms. I closed those up and changed those into a pop shop, tried selling pop, and I retained my U-Haul business.

Q. Basically at that point you did it as a strictly self-serve unit?

A. Strictly self-serve.

Q. When did you change it into a self-serve unit? A. Approximately 1976, '77--'76.

* * *

[Rigg, R. 501]

* * *

Q. When you went self-serve, what kind of margin did you try to post? A. The same, three cents.

Q. And were you able to sell enough gas to stay in business? **[Rigg, R. 502]**

A. No, sir.

Q. And did you get a better price from Texaco when you went self-serve? A. No difference.

Q. You still paid retail tank wagon?

A. Correct.

Q. Did you find that you were able to be competitive with other self-serve stations when you were selling Texaco gas in that station? A. Overall I was competitive with the other brands.

Q. Were you competitive in the Texaco brand? A. No.

Q. Was your price above the price of the Monroe Street station, the Texaco station at the base of the Monroe Street hill, were you pricing above that?

A. My price was higher, yes.

Q. Could you price at the price of that station-- A. No.

Q. --and make any profit? A. No.

Q. Did you ask Texaco for a better price when you went self service? A. Yes.

Q. Who did you talk to? A. Vogelman. I believe it was Vogelman.

[Rigg, R. 503] Q. What did he say to you? A. Things just went the way they were, like they have always gone. I was rejected.

Q. Have you ever had a conversation with anybody from Texaco about obtaining a tractor-trailer and hauling your own product and getting a better price? A. Yes, I did at a breakfast meeting with Tom Bollinger.

Q. Would you tell the jury about when that conversation occurred? A. That conversation occurred--I was still at the Monroe Street station when that conversation took place, so that would be prior to 1973, during that time frame.

Q. Can you tell the jury what you asked at that time of Mr. Bollinger? A. We tried to see if we could buy a truck and haul our own product just like the other distributors did so that we could pay less for the product, reduce our retail price.

Q. Were you permitted to do that? A. No, we weren't. It was rejected.

* * *

[Rigg, R. 507]

* * *

Q. Why did you leave that station in 1977? A. Well, I was kind of discouraged about the way the market and the way things were going. I wasn't making it, I couldn't make it profit-wise.

Q. Would you tell the jury who Mr. Vogelman is and Mr. Bollinger is that you testified to previously? A. Mr. Bollinger was in charge of the Spokane area. I believe he was a

district manager, is what his title was. Vogelman through the years at times was a sales representative from Texaco, and there was a period of time when he was the head of the TBA, tires, batteries and accessories.

Q. Did you have any Gull stations that were operating in the area that you serviced? A. Yes, I did.

Q. Where were they located? A. There was two of them located approximately in the east 500 block of Francis about the Fred Meyer [Rigg, R. 508] store.

Q. That would be east of you? A. East of me.

Q. About how far? A. I was in the 1700 block, so it would be 22 blocks.

Q. And were they on both sides of Francis? A. Both sides of the street, almost across from each other.

Q. Did you consider those stations to be in your competitive area? A. Yes, sir, I did.

Q. Did you consider them to be as important in competition with you as a Texaco brand? A. No.

Q. They were part of the unbranded market? A. Right.

MR. WHALEY: That's all.

* * *

[Rigg, R. 512]

* * *

Q. Did you observe as a member of the industry a lot of changes and occurrences happening here that in some way revolutionized or altered the traditional way of marketing gasoline that you had grown up with? A. Yes, things changed.

Q. There were a lot of changes weren't there? A. Like what? Excuse me.

Q. I have in mind the fact that supplies of gas were sometimes adjusted, were they not? A. Supplies?

Q. Supplies. A. Well--

Q. The availability of gas was not always the same as it had been before, isn't that true? A. That's true.

[Rigg, R. 513] Q. And there was coming into the market a new style of selling gas, was there not, Mr. Rigg, a style that was represented by self service that you recognized in 1976, isn't that correct? A. Correct.

Q. In other words, self service hadn't been a popular way to sell gas when you were growing up in the 1960's down at your father's station on Monroe and Sharp, isn't that correct? A. In the Sixties?

Q. Yes. Self service wasn't a popular way to sell gas in the Sixties, that was

a new advent that occurred in the 1970's? A. Right.

Q. And it was gaining momentum during the time you were operating that station in '73, '77 out on North Ash and Francis, isn't that a fair generalization? A. Fair generalization.

* * *

[Rigg, R. 523]

* * *

Q. You testified that you were unable to lower your margin when you went self-serve from three cents. Why was that? A. There wasn't anything there to lower, to live on. I got a family to feed, too. I can't--I couldn't drop any more.

Q. What would happen if you lowered your margin any further? A. If I lowered the margin any further? How would I eat?

Q. Could you make a sufficient profit to stay in business? A. No.

* * *

[H. Rigg, R. 540]

* * *

Q. During the years 1970 to 1976, did you gain some new customers because certain people wanted full-serve and not self-serve? A. I had some of them make this remark, but very few; the older people especially and the women.

Q. During the time that you were in the service station, is it true, sir, there was a trend in this area away from full-serve and towards self-serve? A. Yes.

* * *

Q. (BY MR. ROBINSON) Talk about this trend that went from full-serve to self-serve? [H. Rigg, R. 541] A. Yes.

Q. Did that trend hurt all the full-serve stations? A. I wouldn't

know about anybody but me and I would say, yes, it did.

* * *

[O.W. MILLER, R. 558]

* * *

DIRECT EXAMINATION

BY MR. EBEL:

Q. Would you state your name and address? This is on page two. A. O. W. Miller, 3868 Elmer Road, Grants Pass Oregon.

Q. Are you presently employed by anyone? A. No, sir.

Q. You are retired?

[R. 559] A. Right.

Q. From the Texaco Company? A. Right.

Q. How long did you work for Texaco before your retirement? A. Approximately 30 years.

Q. How old are you? A. 63. I will be 64 on September the 18th.

Q. What was the date of your retirement? A. November 1st, 1975.

Q. At that time what job did you hold with Texaco? A. Assistant regional manager, wholesale sales.

Q. How long did you hold that job? A. In the Portland region since, I believe, June 1st, 1971.

Q. Could you explain what your functions were as assistant regional manager of wholesale sales? A. I was responsible for wholesaler relations.

Q. What specifically did that include? A. Generally calling on the trade, negotiation of certain contracts, maintaining the proper relationship between the company and the wholesaler class.

* * *

[Miller, R. 569]

* * *

Q. Did you in the course of your duties make investigations to determine whether somebody buying at the distributor price was in fact performing true distributor functions? A. Yes, sir.

Q. What kind of investigations did you make? A. There was the usual field investigation, and in a number of cases I was personally acquainted with the wholesaler and had a general knowledge of his activities.

Q. Did you make any such investigation of the activities of John Dompier Oil Company? A. Yes.

Q. And when you say he had to be a true wholesaler to qualify for this discount, are you intending to say that if he was something else, for example a retailer, that he would not qualify for the discount? A. He wouldn't qualify for

the discount as a [Miller, R. 570] retailer.

Q. Do you know of any occasion when Texaco ever stopped selling at a discount to someone labeled a distributor because he no longer was a true wholesaler, as you described it? A. I don't recall any cases.

Q. In the course of your job, you would have known about any such instances in your geographical area, wouldn't that be true? A. I am sure I would.

Q. You said that you made field investigations and that you made investigations as to John Dompier Oil Company. Can you describe what was involved in this or these field investigations. A. Well, generally a visit to the distributor's place of business or contact with the district manager who is familiar through his

organization of the activities of the accounts within his area.

Q. Did you know during this period of time that the John Dompier Oil Company was itself operating retail service stations? A. No.

Q. That was never revealed to you by your investigation? A. No.

[Miller, R. 571] Q. Had you known that fact, would that have made a difference to you in terms of whether John Dompier Oil Company qualified to receive the distributor discount? A. No.

Q. Why not. * * * A. John Dompier would still have been required to perform various functions that he would under any other ordinary circumstances plus some additional ones.

Q. As I understand it then, the fact that a person buying under a distributor contract and receiving a discount was operating himself retail service

stations didn't make any difference to Texaco insofar as his continuing to get the discount for gasoline sold through those service stations? **A.** To begin with, John, I don't know that he operated stations himself. But whether he did or not would have no bearing on the case. We can't tell him how he disposes of product once he purchases it.

Q. The question is not what you can or can't do, but whether that was something that you took into account in determining whether he got the discount or not. And I gather that it was not something? **[Miller, R. 572]** **A.** It was never considered.

Q. Now, whether or not you knew that John Dompier was doing this, were you aware that some distributors in your region were doing this; that is, operating their own retail stations?

A. I don't really remember their method of operation.

Q. You don't have any present memory of any distributor ever doing that? **A.** No, I don't.

* * *

Q. When is the last time you talked to either John Dompier or Neil Dompier? **A.** It would have been in September 1975.

Q. Within your region, which I guess covers five or six states, did all of the distributors receive the same discount off the retailer tank wagon price? **A.** No, sir.

Q. It was generally true, wasn't it, that the discount was the same for all distributors? **A.** Are you talking about this geographical region?

Q. Yes, sir. **A.** No, it is not generally true.

Q. * * * In 1972 and '73 was it the policy of Texaco **[Miller, R. 573]** to

encourage its distributors to obtain new retail business? **A.** 1972 and '73?

Q. Yes, sir. **A.** No.

Q. Was that the policy in 1972? **A.** Perhaps early '72. I again--my memory isn't all that good.

Q. The distributors' stations received the temporary competitive allowances from Texaco, did they not? **A.** Distributor stations?

Q. Yes, sir, distributor supplied stations. **A.** No.

Q. Do you know what a temporary competitive allowance is? **A.** Yes.

Q. The distributor received his allowance depending on the price at the stations he supplied, did he not? **A.** He may have.

Q. Well, did he? **A.** If he provided the necessary evidence, he could have received an allowance.

Q. They were eligible for it, weren't they? **A.** Providing it was bona fide competitive evidence, yes.

[Miller, R. 574] **Q.** And that had to be evidence with respect to the specific station that he supplied, did it not? **A.** Competitive evidence in the area in which that station may have been located.

Q. But the evidence related to a particular station of his, correct? **A.** I believe that is correct.

Q. And wasn't it at least in 1972 or 1971, a rather routine occurrence that temporary competitive allowances were extended to all kinds of retail stations? **A.** I don't think it was ever routine.

Q. Well, what I mean, and perhaps routine isn't the correct word, but it was not an unusual occurrence that that happened, was it? **A.** No. It would not

have been unusual back in that period of time.

Q. And it is also correct, isn't it, that by that process you became aware of the locations of stations which the distributor supplied? A. Yes. We would have been aware, someone in our company would have been aware of those locations.

Q. Do you recall a program called the Fill the Gap program? A. I surely do.

[Miller, R. 575] Q. Can you tell me what that was? A. Well, it was a program by which we encouraged our wholesalers to develop additional retail representation in areas where we felt we didn't provide adequate availability of product to the motoring public.

Q. What if anything did Texaco do to encourage distributors to get that additional retail representation? A. We offered the assistance of our

salaried personnel in providing advice in doing the leg work. I believe that at one time we may have offered plans, engineering service, and we also offered financing through our leases where the location would justify it, and the financial condition of the wholesaler warranted it.

Q. Was there also a program called the Wholesaler's Glitter Program? A. Yes, sir.

Q. Explain generally what the purpose of that was. A. The purpose of that was to encourage wholesalers to be better business people.

Q. Did that include helping the wholesalers to improve the appearance of their retail stations? A. I believe it included that, yes.

* * *

[Miller, R. 586]

* * *

Q. (BY MR. EBEL) Exhibit 12 is concerning 1972 wholesale objectives?

A. Right.

Q. And your first objective is to exceed all sales department product goals? A. Right.

Q. And generally when you say wholesale objectives, you mean objectives for selling to wholesalers, is that what you are referring to? A. No.

Q. When you say, "exceed all sales department product goals," you mean sales goals, don't you, for sales to wholesalers? A. To wholesalers, yes.

Q. Including distributors? A. Yes.

Q. The third item on the district objectives is, "Analyze or update each wholesaler market analysis by June 30, 1972." Can you explain what that wholesaler market analysis refers to?

A. I believe that was a program we had for assisting [Miller, R. 587] the wholesaler to improve his volume and revenue and profits and generally applicable, as I recall, to consignees.

Q. And in item four you say, "Secure new Fill the Gap service station," and then you have a list of various areas, and in Spokane you have the number three. Does that mean that your goal was to find three new service stations?

A. In the Spokane district.

Q. Right. And those were to be serviced by wholesalers? A. That is correct.

Q. Was it your responsibility to see that these objectives were carried out?

A. Yes.

* * *

[Miller, R. 588]

* * *

Q. In the year 1975, Mr. Miller, did you become aware of the fact that John Dompier Oil Company was [Miller, R. 589] operating its own retail service stations? A. No.

Q. When if ever is the first time you learned of that? A. I don't recall ever being aware that they were operating their own stations.

Q. Did you from time to time meet with Mr. Bowman and Mr. Vogelman? A. Not beyond seeing them at such time as I would visit the Spokane office and perhaps then it would be only to say hello and have a cup of coffee or something.

Q. Did Mr. Vogelman ever complain to you about the fact that Dompier had begun operating several service stations? A. Not to my recollection.

Q. Or that Dompier's volume had significantly increased in comparison to independent retailers in Spokane? A. I certainly don't remember it.

Q. Do you recall ever hearing about a situation like that anywhere within your region? A. No.

Q. You said earlier you made an investigation as to whether persons were continuing to be true [Miller, R. 590] wholesalers to qualify for this wholesale discount. Is it correct that your investigation did not include any investigation as to whether they were operating their own stations? A. True.

Q. Is it true that your investigation did not include that? A. Did not include that.

Q. When did you retire again? A. November 1st, 1975.

* * *

Q. Well, you said you didn't make any investigation as to whether a distributor was operating a retail [Miller, R. 591] station on his own, correct? A. Yes.

Q. And I think you said you didn't even know that the Dompier Company was doing that, is that also correct? A. Right.

Q. So, would it also be correct that you didn't make any effort to figure out where such stations were located? A. Only in a general way to have some general idea of whether or not we had adequate representation in an area.

Q. Did you make any investigation to figure out whether stations were hurting each other because they were too close? A. No.

Q. * * * Do you know the reasons why Texaco engaged in dual distribution in Spokane rather than simply engaging in

only one kind of distribution? A. I can make an assumption.

Q. I don't want an assumption, I want to know if you know why. A. No, I don't know why. * * *

[Miller, R. 592] * * * A. Well, certainly we wanted to obtain our reasonable share of the market, and in order to do so we would operate through these various forms of distribution to gain adequate representation.

Q. Other than that general statement, do you know of any specific reason why it was followed as a system in Spokane, for example? A. I don't know of any specific reason. When you specify one town, we engaged in various forms of distribution in order to be able to serve all various types of customers in all areas.

* * *

[RONALD ALLEN HARDIN, R. 632]

* * *

Q. Mr. Hardin, could you tell the jury your present home address? A. Yes. My present address is North 4019 Hemlock.

Q. What is your occupation? A. Currently I am the director of sales for the Ridpath Hotel.

Q. Can you tell us what your occupations were, just briefly if you would, over the last period, say, 1971 to the present? A. Yes, I was in the broadcast business. I was the **[Hardin, R. 633]** news director for KSPO radio from 1971 to about 1974. Then I went for a short nine-month stint with KXLY radio in 1974, and then I went over to KGA, and I was the news director there from late 1974 through 1977. And then I went to KHQ radio where I became the sales manager of the radio station there.

Q. Can you tell us just generally the locations in Spokane of those occupations? A. Yes. KSPO at that time was located in the Columbia Building downtown and KXLY is at its current location, which is 500 West Boone Avenue in the area of the Coliseum. KHQ is located in the--I am sorry, KGA is located at 6200 South Freya, South Regal, and KHQ in the 4200 block of South Regal.

Q. Can you tell us about approximately how many miles you traveled each day to and from work, if you can recall? A. For the KGA and KHQ, the duration of my employment there was about eight to nine miles.

A. Those are on the south side?

Q. That's correct. It was less than that to KXLY, possibly half of that. Maybe about three or four miles when I was with KSPO.

Q. Were you served with a subpoena by me to be present today?

[Hardin, R. 634] A. Yes.

Q. Do you know Mr. Hank Rigg? A Yes, I do.

Q. Could you tell the members of jury how you know Mr. Rigg? A. Yes. In the early Seventies I visited Hank Rigg's station, and after going to the station a couple of times I got to know him very well because he was a very friendly individual. He serviced my car. He came up to the car and was very cordial, and over a period of a couple of times at his station we just became very good friends in a business relationship. He seemed to be a very honest individual and we just developed a friendly business relationship over the years.

Q. So, could you tell us approximately the years that you were trading with Mr. Rigg, if you know? A. Yes. It was

approximately in the time period of 1970 through 1980.

Q. Did you buy gas during that period of time from any other Texaco stations in Spokane? A. Yes, I did.

Q. Can you tell me which ones they are? A. Yes. I recall purchasing gasoline from a Texaco station directly at the base of the Monroe Street [Hardin, R. 635] hill, approximately Monroe and Alice, I believe. I also recall a time or two that I visited the station on Third Avenue, and also there was a station that was on Freya.

Q. So those were both Texaco stations as well? A. They were Texaco as well.

Q. Would you have occasion to trade with those stations to and from work? A. Yes. For the most part all of my trading was to and from work.

Q. Did you have a Texaco credit card during that time period? A. During

that time the only card that I had was a Texaco credit card.

Q. Can you give the jury an estimate approximately of how much of your gasoline business was using the Texaco credit card? In other words, did you purchase all your product on the card or did you pay cash? **A.** It certainly was over 90 percent of the time that I used the Texaco credit card.

Q. Was there a reason why you only had one credit card in Spokane at that time? **A.** Yes. I was--one of the reasons was Hank Rigg. He was an excellent person and a good operator, and I just--I was very happy with Texaco gasoline and the **[Hardin, R. 636]** service that I was receiving, so I really didn't see any need to have any other credit card at all.

Q. During those same years, 1971 '72 to the end of the Seventies, when you were

living on the north side of Spokane did it become apparent to you that the prices being posted at the three stations you identified, Monroe, Freya and Third Avenue were posting lower retail prices than Mr. Rigg? **A.** Yes, it did.

Q. If so, can you tell us approximately what the difference in the price was, and I am not going to hold you to the exact figure because I know we are talking about many years ago. **A.** It was between three and four cents less than the price at Hank Rigg's station.

Q. Now, I think you testified, and correct me if I am wrong, that you also traded with Mr. Rigg during those years, is that correct? **A.** That is correct.

Q. And up until the time that you began to notice this difference in the price, the three to four cents, did you purchase the majority of your gas from

Mr. Rigg? Can you give us any idea what your gas needs were that he filled? A. Yes. I purchased most of my gas with Hank [Hardin, R. 637] because I really found him to be a delightful person and I like to deal with people that I feel are honest, and he certainly fit that category.

Q. After you noticed this change in the buying price that you described, did that affect your buying habits? A. Yes, it did.

Q. Can you tell the jury what happened after that? A. Well, I noticed that periodically as I drove by on Monroe that the prices were lower at the station below the hill there at Monroe and Alice, three or four cents lower, and at that time I didn't have a whole lot of money to spend on gasoline, and so that was a significant amount lower than Hank's price, so I would say that

on the average once I noticed this of every four times that I bought gasoline, three of the four times I would purchase it at the station right below the hill on Monroe, and the fourth time, I am sure that I got extra service and I'm sure that Hank knew that I was still around, I was at Hank's station.

Q. Now, the station on North Monroe there, did you have to get out and pump your own gas at that station? A. One of the things about that station that intrigued me was that despite the fact the price was [Hardin, R. 638] three or four cents lower, the attendant also pumped the gasoline, so I really didn't even have to get out of the car.

Q. Do you recall if you had to get out of your car at the station on North Freya? A. I really can't remember.

Q. What about the one on Third Avenue? A. As I recall, that had an attendant as well.

Q. Did the fact that the station on North Monroe had a car wash, was that of any significance to you? A. I don't ever recall using the car wash.

Q. Can you tell us generally how often you would have observed the prices at those stations on North Monroe? A. I drove by there every day, and it was quite an obvious sign, so I noticed it at least every one or two days as I drove by there.

* * *

[Hardin, R. 639]

* * *

Q. What was the reason why you switched from Mr. Rigg? A. Price. I, as I said before, I didn't have a whole lot of money to spend on gasoline at that time, and a three to four cent savings at that

time--as I recall, the gasoline prices were lower, so a three to [Hardin, R. 640] four cent savings was quite a bit more significant at that time.

Q. Did you ever talk to Mr. Rigg during this same time period we have been referencing about his retail prices and what was happening? Just answer that yes or no. A. Yes.

Q. Then can you tell me where the conversations would take place and about what was said, if you know, by you? A. Yes. At that time I told Hank that I was really concerned about the fact that I had to trade at another station, because I had gotten to like Hank and he impressed me as a very honest businessman. And I told him that I had to trade at the other station because it was cheaper by three or four cents, and I asked him why that was the case. And he said--

* * *

A. And the--Hank said that the price was--that he offered was in response to the business costs that he had to operate on and his price could not be any lower.

* * *

[Hardin, R. 643]

* * *

Q. During the whole period of time we are talking about, roughly the decade of the Seventies, you were driving your own car that you had to buy the repairs for? **A.** That's correct.

* * *

Q. And you appreciated the fact that Hank Rigg's provided for you good reliable maintenance when you needed it? **A.** That's correct.

Q. You had him do that maintenance, I assume, Mr. Hardin? **A.** He did all the maintenance for my car except any maintenance that may have been required

under warranty which was done by a new car dealer.

[Hardin, R. 644] **Q.** I understand. With the exception of that you had him do things like what, change the oil and lube the car once in awhile? **A.** That's correct, change the tires, anything along that line.

Q. Changing the tires. If it needed new windshield wipers he would take care of that? **A.** He would do.

Q. I suppose he would replace the headlight if one was broken? **A.** That's correct.

Q. All those services. How about tune-ups, did he do those for you as well? **A.** He did all the service on the car other than the warranty work.

Q. He was really providing you something special, in that he was giving you reliable service that you could trust and was available when you knew

you needed it, isn't that correct?

A. That's correct.

Q. You couldn't buy that at the Monroe Street station, could you? A. The only thing that was available there was the attendant to pump gasoline.

* * *

[RUSSELL H. VICTOR, R. 685]

* * *

Q. Would you state your name, please.

A. Russell A. Victor.

Q. Where do you reside? A. Seattle.

Q. And what is your occupation?

A. Executive vice-president of Gull Industries.

Q. And how long have you held that position? A. Nine years.

* * *

What are your duties with Gull Oil Company as executive vice-president?

A. Responsibility for all the

operations of the company, finance, sales, trucking.

Q. And where does Gull Oil Company do business? A. We operate in Idaho, Washington, Oregon and Nevada.

[Victor, R. 686] Q. What is the primary business of Gull Oil?

A. Petroleum distribution.

Q. When you say petroleum distribution, in all those states does Gull Oil Company operate retail service stations? A. That is correct.

Q. With respect to Eastern Washington, what business does Gull Oil Company conduct in Eastern Washington? A. We have service stations which we own and lease, and we also wholesale some products.

Q. When you say products, this being gasoline motor fuels? A. Gasoline motor fuels, that is correct.

Q. In Spokane, Washington, Spokane County, Washington, does Gull Oil Company operate retail service stations? **A.** We lease them, service stations to operators.

Q. Does Gull Oil Company own service stations in Spokane, Washington? A. That is correct.

Q. Is the gasoline product that is owned by Gull Oil Company sold through those stations? **A.** That is correct.

Q. With respect to those stations, who owns the product that is sold through the station? **[Victor, R. 687]** **A.** Owned where? Do you mean in the ground or in the tanks or what?

Q. In the ground. * * * **A.** On commission stations we own the product in the ground, and on consignment we own the product in the ground.

Q. So that with respect to the product in Spokane that is sold to stations that

Gull Oil Company owns, Gull Oil Company owns the product in the ground? **A.** That is correct.

Q. Who sets the retail price at which the gas is sold at those stations in Spokane? **A.** On commission accounts we do. On consignment, the operator does.

Q. At the present time do you have any consignment accounts in Spokane? **A.** No.

MR. EBEL: I should note for the record that the deposition was taken on October 12, 1978.

Q. So with respect to the stations Gull owns in Spokane, Gull sets the price at which the product is sold? **A.** Correct.

Q. Where does Gull pick up the product that it sells in Spokane? **[Victor, R. 688]** **A.** At, I think it is, the Texaco terminal.

Q. And from whom does Gull purchase the product that it sells in Spokane? **A.** Texaco, Incorporated.

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[Victor, R. 689]

* * *

Q. (BY MR. EBEL) From 1970 to the present, could you describe for me the type of arrangements that Gull had with its retail stations in Spokane? A. From 1970 to the present?

Q. Yes, sir. A. Around 1970 most of our stations were all on a consignment basis where we would own the product in the ground, and when the dealer pumps the product out he assumes title to the product. Then when we went to self-serve, we remodeled these stations and put them on commission basis. On commission basis we own the product through the pump and we give the dealer a [Victor, R. 690] commission on how many gallons are pumped.

Q. On the consignment stations that you had, did you own the property where the

station was located? A. In some cases. In some cases we had leases.

Q. The lease would be from-- A. From the property owner to us.

Q. You would control basically retail facilities at the station? A. That's correct.

Q. And then you would sell the product to a dealer? A. As it passes through the pump.

Q. And you would retain title to the product while it was stored? A. That is correct.

Q. But as it was sold to the motoring public, title would pass to the dealer and then to the purchaser of the motoring public? A. That is correct.

* * *

[Victor, R. 691]

* * *

Mr. Victor, you have prepared a list, I believe, of your stations that

were operated in Spokane from 1970 to the present which includes volumes and dates the stations were operated. A. Yes.

Q. And the basis upon which they were operated, is that correct? A. Yes.

Q. Could you make a copy of that for the use of Texaco counsel, and we will mark that as an exhibit? A. Yes.

Q. * * * I would hand you what has been marked Exhibit 385 and ask you if that is a true copy of a schedule which you prepared of stations that were supplied or operated by Gull Oil Company in Spokane from 1970 to the present. A. That is correct.

MR. EBEL: Your Honor. We offer Exhibit 385.

MR. ROBINSON: Your Honor, subject to certification we have no problem.

THE COURT: 385 admitted.

[Victor, R. 692]

* * *

Q. (BY MR. EBEL) During the period from 1970 to the present, were there stations which you supplied in Spokane but which were not under any contractual relationship with Gull? A. I think they are listed on this sheet.

Q. There were stations you supplied product to but did not-- A. Have any lease or ownership of, that is correct.

Q. Of the station? A. Yes.

Q. And what stations were those as described on Exhibit 385? A. Number one, number two, number three, number four. Just those four.

Q. * * * How many personnel have you had employed in Spokane by Gull Oil Company from 1970 to the present? A. Two to three.

Q. At the present time do you have three people employed there? A. Yes.

Let me clarify that. We have one full-time truck driver and a half-time truck driver.

Q. And do those truck drivers perform any duties [Victor, R. 693] besides driving trucks for you? A. The truck driver schedules the deliveries.

Q. Does he have any functions for Gull other than delivery of product and the scheduling of deliveries? A. No.

Q. Would that be true with respect to both truck drivers? A. That is correct.

Q. And what is the other employee Gull Oil Company has in Spokane? A. Mr. Tortorelli.

Q. What is his job? A. Area supervisor. He calls on service stations and makes price surveys and sees the stations are operating properly and arranges for new dealers.

Q. Other than the two truck drivers who haul product for Gull, the only

supervisory person in Spokane employed by Gull would be Mr. Tortorelli? A. That is correct.

* * *

[Victor, R. 698]

* * *

Q. Did you have a price which you would call a commission price to those stations which operated on commissions? A. There would be no commission price. We owned the product, we never sell that product to the dealer.

Q. The price that would exist with respect to commission stations would be the price at which it was sold to the motoring public? A. That is correct.

Q. And that would be the retail price? A. That is correct.

* * *

[Victor, R. 702]

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Q. Did Gull, in Spokane between the period 1970 to the present, ever employ the use of price zones? A. Yes.

Q. And what was a price zone? A. It was a zone that we felt that our station was situated in, it would encompass our competition and we would price in that zone area off our competition.

Q. Were those zones the same as the zones that were designated by Texaco? A. No.

Q. Were you aware that Texaco had zones in which they included Gull stations? [Victor, R. 703] A. Yes.

Q. Were your zones larger or smaller than the zones that were created by Texaco? A. I believe ours were larger.

Q. They would cover a larger geographic area? A. I believe so.

Q. Why did you not use the Texaco price zones? A. In some instances they didn't fit our needs to be competitive with our competition.

Q. You thought your competition was that larger area than the area defined by the Texaco price zone? A. That is correct.

Q. Do you have price zones in existence in Spokane at the present time? A. No.

Q. In your observations of the Spokane market with respect to pricing, did the price in Spokane generally seem to move as a city as a whole as opposed to small price zones? A. I think you could say that, as I recall, correct.

Q. Do you have any observations as to why Spokane pricing operates that way? A. I believe Spokane is not a big community and people can get across town fairly easily in Spokane where they couldn't in Seattle, for instance. They

[Victor, R. 704] are more mobile over there than we are here.

Q. They are more mobile in Spokane?

A. Yes.

Q. In determining your price that you would set at a commission station, was there any price differential that you tried to maintain between your price and the prices posted at major brand stations? A. We tried to maintain a penny below the major brands.

Q. Were there any major brand marketers in Spokane who attempted to price in the same manner you did during the period 1970 to the present? A. I wouldn't say attempted to price the same as we did. You might say there are more aggressive pricers in the major field.

Q. Was there any particular distributor of product in Spokane that you felt was an aggressive marketer? A. I think there was two aggressive ones. One was

the Exxon jobber and one was a Texaco jobber.

Q. Who was the Texaco jobber?

A. Dompier.

Q. You considered John Dompier an aggressive pricer in the Spokane market. A. Correct. * * *

[Victor, R. 705]

* * *

Q. What do you mean by an aggressive pricer? A. I think they try to price their station below their competition in their immediate surroundings of that unit.

Q. Would an aggressive pricer generally price below the prevailing major price in the area in which the two compete? A. That is what I call an aggressive pricer, correct.

Q. What in your opinion would happen to the volume of sales of your product if you were to price at the same level as

the price of a major competition in the area in which you compete? A. I think that we would probably lose half our volume.

MR. EBEL: Counsel for Texaco--counsel for Gull then asked why.

A. The customer would have no incentive to come to our unit over major units, no credit cards, no national brand, no advertising, no service. They have to pump their own product. Unless we have that price advantage, people won't come into our units.

Q. You figure the number one reason people come to your stations is price? A. Definitely.

[Victor, R. 706]

* * *

Q. And the outlets that you had in Spokane under the Gull brand, did they sell Texaco brand motor oils? A. Yes, I am sure they did.

Q. At your commission stations that are operated in Spokane, would the retail sale price of the product be determined by Gull personnel in Seattle? A. That is correct.

Q. Any change in the price would have to be approved by Seattle before it could be changed in Spokane? A. That is correct.

* * *

[CLIFFORD N. ROBINSON, R. 746]

* * *

Q. Let's talk about with gallons, losing back room business. Is it true, sir, that the Dompier stations that you were concerned with, the ones that were supplied by John Dompier Oil Company, did not have any back room services? A. None.

Q. Am I correct in that, sir? A. What?

Q. Am I correct when I say? A. You are.

Q. Okay. And is it true that for the most part you were able to retain the back room business that you had through the years? **A.** Yes.

Q. Now, near your station was there also a Standard station on Wellesley and Market? **A.** Yes, there was, just one block south.

Q. And was that a competitor of yours? **A.** Sure.

[Robinson, R. 747] Q. And that station was much closer than any Dompier station, correct? **A.** Yes.

Q. And also at Wellesley and Market there was an American station? **A.** Yes.

Q. And would that station--was that station also a competitor of yours? **A.** Yes.

Q. And that station was closer to you than any Dompier station? **A.** Yes, it was.

Q. And then on the intersection of Wabash and Market was there a Shell station? **A.** Yes.

Q. And was that station closer to you than any Dompier station? **A.** Yes, it was.

Q. On Rowan and Martin was there a Big Red's self-serve unit? **A.** Yes, there was.

Q. Was that station closer to you than any Dompier station? **A.** Yes.

Q. And was that Big Red station during the time **[Robinson, R. 748]** that you were a Texaco dealer remodeled and turned into a tire store and semi self-serve? **A.** Yes.

* * *

[Robinson, R. 750]

* * *

Q. (BY MR. ROBINSON) Now, on Gordon and Market was there a Vista station? **A.** Yes.

Q. And was that station closer to you than any Dompier station? A. Yes, it was.

Q. And just one block from that, was there a Jackpot station? A. Yes, sir.

Q. And was that station likewise closer to you than any Dompier station? A. Right.

Q. On the southeast corner of Euclid and Market was there a private brand, and I will spell this for the reporter, A M O C O R I L L O? A. Yes, there was.

Q. And was that station closer than any Dompier station? A. (Witness nods head affirmatively.)

Q. Do you recall where the Hillyard Safeway store [Robinson, R. 751] was? A. Yes.

Q. And on the edge of that parking lot, was there a station that used to be known as the Headlight Oil Company? A. Yes.

Q. And was that station closer to you than any Dompier station? A. Yes, it was.

Q. Do you recall that there was some 12 full service stations in the Hillyard area at one time? A. Right.

Q. And did you regard those 12 full service stations as your primary competition? A. They were all competition, yes.

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[JOHN NEIL DOMPIER, R. 755]

* * *

Q. Mr. Dompier, are you the same John Neil Dompier that is the president of Dompier Oil Company? A. Yes.

Q. Were you subpoenaed by me to be here today? A. Yes.

Q. How long have you been president of Dompier Oil Company? A. Since 1973.

Q. And prior to that time who was president of Dompier Oil Company? A. My father, John K. Dompier.

* * *

[Dompier, R. 756]

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Q. (BY MR. WHALEY) Mr. Dompier, would you give the jury, while we are getting these exhibits, the background of Dompier Oil Company and its becoming a distributor of Texaco products? A. All right. John Dompier Oil Company was formed by my father in 1954. At that time we sold only Quaker State motor oil. Shortly after that we got involved in the heating oil business, and to the best of my recollection we became involved with Texaco as a distributor for their motor oil about 1956 or '57.

In about 1960 we became what Texaco referred to as a full line distributor, meaning that we were distributing not

only their motor oil but their heating oil, diesel fuel and gasoline as well. Approximately the middle part of the Sixties, in the Sixties we began selling some gasoline, and toward the latter part of the Sixties our gasoline business began increasing to where probably in the early Seventies, it became the most important part of our business.

[Dompier, R. 757] Q. By the middle Seventies what percentage of your business was selling gasoline as opposed to other products? A. Well, this would just be a guess but middle 1970's?

Q. Yes, sir. A. 75, 80 percent.

Q. And of that 75 to 80 percent was that gasoline being sold at retail?

A. Not all of it.

Q. What percentage of your gasoline sales would have been at retail?

A. Probably 84 to 90 percent.

Q. Of your gasoline sales? A. Of gasoline sales, (nods head affirmatively).

Q. Would it be fair to say that the emphasis of your business changed substantially from the early Sixties until the Seventies? A. Yes.

Q. Did you have any conversations with Texaco during this period of time encouraging you to--Dompier Oil Company to change its emphasis and to move into the retail business? A. Yes, we did.

Q. Would you tell the jury about that?

[Dompier, R. 758] Q. Well, at various times Texaco encouraged us to begin supplying retail service stations. In the early Seventies they did that, and then as time went on, they encouraged us to own the stations that we were supplying; in other words, to try to control our own retail business. And beginning about 1974--we did purchase a

station in '74 and some more in '75 and we began operating those as company operations with salaried company employees.

Q. Would you point out to the jury the stations you began to supply in the early 1970's and tell them the address? There is a map right next to you.

A. We began to supply, not necessarily--

Q. Yes, beginning with the ones you supplied. A. We supplied a station at North 303 Third Avenue.

Q. Can you point that out to the jury on the map?

THE COURT: Just a moment. There isn't any North 303 Third, did you misspeak yourself?

THE WITNESS: Yes, East 303 Third. Excuse me.

THE COURT: All right.

A. That would be about in this area. And then we supplied a station at

North 3306 Monroe, right here. One at North 502 Freya that was located right here. That would be up to 1975. We also supplied for a **[Dompier, R. 759]** short time a station on North Division, nine--I believe it was 920 North Division, and that would be about here. We supplied one at Division and Cleveland. That would be about the 3000 block of North Division, right about here. We had one on North Division north of Francis Avenue shown right here. One on Market Street, 2924 North Market, right here. We supplied one on Mission Avenue. I believe the address is 1831 Mission, here, (indicating). One out in the Valley on Sprague Avenue about the 6700 block on East Sprague, and then here is one out in the Airway Heights area.

Q. (BY MR. WHALEY) Thank you. You can return to your seat.

Do you recall beginning to supply gasoline to stations which were named Red Carpet? A. Yes.

Q. And who were the original owners of Red Carpet? A. My father, John K. Dompier, and a man by the name of Robert Harder.

Q. And when, to your recollection, was Red Carpet formed and you began to supply gasoline to them? A. Red Carpet was formed, I think, in the spring of '68. We began supplying gasoline when the first station was completed in the fall of '68.

[Dompier, R. 760] Q. And would you tell the jury where the Red Carpet stations were located? A. The first one was located at Division and Cleveland, and that would be approximately the 3000 block on North Division right at the bottom of the hill. And we supplied that one only from the fall of

'68 until about the first of 1970 when we began supplying the second Red Carpet service, which was located on East Sprague around the 6700 or 7000 block, something like that.

Q. Do you recall when Mr. Harder was bought out of the business by your father? A. In the fall of '69.

Q. So from '69 on, the Red Carpet was owned by your father? A. That's right.

Q. And who was the sole owner of the John Dompier Oil Company at that time? A. My father.

Q. So he was the president of Red Carpet as well as the president of John Dompier-- A. That's right.

Q. --Oil Company? Where were the corporate offices of John Dompier Oil Company at the time you were supplying Red Carpet? [Dompier, R. 761] A. At that time North 407 Madelia.

Q. Where were the corporate offices of Red Carpet? A. I don't know, I think probably the same address.

Q. Did you send mail and--

MR. ROBINSON: Excuse me, Your Honor, I would move to strike the answer as being speculative.

THE COURT: Overruled.

Q. (BY MR. WHALEY) Did you send invoices to Red Carpet? A. Yes.

Q. And where would you invoice Red Carpet? A. North 407 Madelia.

Q. That is the same corporate offices address as your company? A. That's right.

Q. And was any other company in that building besides you at that time? A. No.

Q. So, the bills to Red Carpet went to your same address? A. That's right.

* * *

[Dompier, R. 770]

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Q. (BY MR. WHALEY) So there is not any confusion, my--I don't want the--his copy appears to be different than mine with the page for delivery farther back so I don't want to--they are not both exactly the same, but what is the point of delivery on your contract? **A.** FOB distributor's bulk plant, Spokane, Washington.

Q. Where was your distributor's bulk plant? **A.** North 407 Madelia.

Q. How much storage capacity for gasoline motor oils, regular and Sky Chief did you have at that bulk plant? **A.** We had a total of 16,000 gallons.

Q. And you had--would you break that down for the jury? **[Dompier, R. 771]** **A.** We had 10,000 gallons of storage for Fire Chief or regular gasoline and 6,000 gallons for Sky Chief.

Q. At the time in 1973 you were purchasing many millions of gallons of gas, is that correct? **A.** Yes, we were purchasing approximately five to six million gallons at that time.

Q. And when you purchased that gasoline, you wouldn't run it from the Exxon pipeline to your bulk plant, would you, and unload it and then take it to your gas stations? **A.** No.

Q. I mean, 16,000 gallons of storage is less storage than you had at a lot of your gas stations, is that correct? **A.** That's correct.

Q. So in the delivery of your gasoline to the stations that you operated or supplied, your bulk plant was not the point at which you distributed the product, is that correct? **A.** That's correct.

Q. I am looking at Exhibit 72. I'd like you to look at paragraph two of

that letter. And would you read to the jury the provision of the agreement as to where the product is to be taken under paragraph two?

[Dompier, R. 772] **A.** It says, "Each time such product is do delivered to your transport trucks, you should advise us of the actual bulk station point of distribution specified in said distributor agreement to which said product is to be transported by you."

Q. And that bulk plant would have been your own bulk plant, is that correct? A. Correct.

Q. And then under paragraph four, what does it say, how the product is to be distributed? **A.** "Said product shall be transported by you to such point of your own account, in equipment owned by you at your sole cost and expense and at your sole risk. Title to said property

shall pass to you upon lifting by your transport truck."

Q. Now, under your--the way you operated, instead of taking the product to your distribution point you take it directly to the stations that you operated or supplied? **A.** Mostly, yes.

Q. And what would be a circumstance where you would use your 16,000 gallons of storage at the bulk plant to supply one of these stations that you operated or supplied? **A.** Oh, if one of the stations ran out of a **[Dompier, R. 773]** particular grade of gasoline and were not able to hold a whole load, we would supply it with a small truck from our bulk plant. And there might have been other--a few other times when it was just more convenient for us to do it that way.

Q. But that would be a rare occasion, is that correct? **A.** Yes.

Q. Now, pursuant to this agreement in May 23 of 1973, under paragraph three, did Texaco pay you for picking up the product and hauling it? **A.** Yes, it did.

Q. And what did they pay? **A.** To the best of my memory, they paid us a figure that was equal to what was referred to as the cross town common carrier rate.

Q. That would have been a rate--that if you had hired a common carrier to haul the product for you, you would have paid them to haul it? **A.** That's right.

Q. And do you understand--to your understanding does that common carrier rate have a built-in-profit? **A.** I am sure that it does.

Q. Did you find it to be an advantage to you to be hauling your own product? **[Dompier, R. 774]** **A.** Yes.

Q. The Mr. Harder that your father formed Red Carpet with in 1960, is that the same Mr. Harder that you later

supplied gasoline to at another station? **A.** Yes.

Q. In what station was that that he had an interest in? **A.** He had the station on Market Street. I believe the address was 2924 North Market Street, and then a few years later he acquired the station at 1831 East Mission.

Q. Would you hand the witness Exhibit 748 and 749?

Would you identify Exhibit 748 and 749?

A. 748 is a picture of the Red Carpet service station on Division and Cleveland.

Q. And what is 749? **A.** 749 is a picture of the Red Carpet service station out on East Sprague.

Q. And were those both flying the Texaco sign, those stations, when you supplied them? **A.** Yes.

Q. And did they take the Texaco credit card? A. Yes.

Q. Under your hauling allowance, the common carrier [Dompier, R. 775] rate, was that payment sufficient to cover the cost of transporting the gasoline? A. Well, we never kept track of it in that manner, but I am sure that it was.

Q. If it hadn't been, you would have told Texaco to haul it, is that correct? A. That is probably right.

Q. Mr. Dompier, would you file excise tax returns during the period of the Seventies? A. Yes.

Q. And did you file excise tax returns that reflected your gasoline sales at retail? A. Yes.

Q. With respect to the salary operation stations that you operated, did you file those forms indicating that you were operating a part of your business at retail? A. Yes.

Q. And did you show to the excise tax people the part of your business that was wholesale and the part of the business that was retail? A. That's correct.

* * *

[Dompier, R. 777]

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Q. (BY MR. WHALEY) And in November of 1975 would you tell us what stations that Dompier Oil Company was operating itself at retail? A. 303 East Third Avenue, 4406 North Monroe, and 502 North Freya.

Q. When you filed these tax returns and you put a portion on there that you referred to retailing, did you consider that portion of your business to be selling gasoline at retail? A. I am not sure whether retailing in this form may not have also included heating oil.

[Dompier, R. 778] **Q.** Did you consider that the gasoline sales you were making that you included on the form to be sales at retail? **A.** Yes, I did.

Q. And that is the same kind of form that any other gasoline dealer would fill out to show retail sales? **A.** As far as I know.

Q. Including the plaintiffs in this case? **A.** Yes, I believe so.

MR. WHALEY: Would you hand Exhibit 785 to the witness?

THE COURT: I am sorry, what was the number?

MR. WHALEY: 785.

Q. (BY MR. WHALEY) Can you identified Exhibit 785, Mr. Dompier? **A.** Yes, they are pictures of our transport truck.

Q. And where were the pictures taken, can you tell? **A.** Looks like they were

taken at the Exxon terminal here in Spokane.

Q. And what was the capacity of those trucks? **A.** 9,400 gallons.

Q. So your truck had 9,400 gallons and your storage at your plant had 1,600? **A.** 16,000.

Q. 16,000, excuse me. **[Dompier, R. 779]** **A.** That's correct.

Q. How much storage did you have at the Freya Street station? **A.** I believe we had a total of 44,000 gallons.

Q. So that would have been substantially more than your bulk plant? **A.** That's right.

Q. And how much storage did you have at your Monroe Street station? **A.** 20,000.

Q. And that is more than you had at your bulk plant? **A.** Right.

Q. And how much storage did you have at Third Avenue? **A.** I believe it was 13,000.

Q. That is a little less than you had at your bulk plant? **A.** That's right.

Q. Did you have any unlidded storage at your bulk plant. **A.** No.

Q. And Market Street, did you start salary operating the Market Street station as well? **A.** Not until about 1979, I believe, on Market Street.

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[Dompier, R. 787]

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Q. (BY MR. WHALEY) What is a salary operated station in your understanding? **A.** We refer to a salary operated station as one that we, John Dompier Oil Company, operates with company salary paid employees?

[Dompier, R. 788] Q. All right. What stations during the period from 1972 to 1981 did you salary operate? **A.** 303 East Third Avenue.

MR. ROBINSON: Your Honor, just for point of clarity, I think we need the starting date rather than just broadly covering all of them.

MR. WHALEY: I will get to the specifics of each station.

THE COURT: All right. With that understanding, go ahead, Mr. Dompier.

A. You want just a list of the stations?

Q. (BY MR. WHALEY) Yes, sir, salary operated. **A.** 303 East Third Avenue, 4406 North Monroe, 502 North Freya, 2924 North Market, 1831 East Mission. For a very short while the station at Airway Heights--and for a period of about two months the station on Driscoll Boulevard and C.

Q. The one at Driscoll Boulevard and C has been the station that had formerly been operated by Ricky Hasbrouck? **A.** Yes.

Q. In a salary operated station, you would buy the gasoline from Texaco and then resell it to the motoring public? A. Yes.

[Dompier, R. 789] Q. The same as a dealer in this case, would you buy it from Texaco and resell it through your station? A. Yes.

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Q. When you bought the--when you salary operated the station you would buy the gasoline from Texaco, is that correct? A. That's correct.

Q. And then you would resell the gasoline through your station to the motoring public? A. That's correct.

Q. Just like the plaintiffs in this case buy their gas from Texaco and resell it to the motoring public? A. That's correct.

[Dompier, R. 790] Q. Is there anything--any sales transaction that you

have between John Dompier Oil Company and your station when you are salary operating it? A. For a period of time we had a sales transaction, we actually wrote an invoice and charged a price to the station, but that was for just a short period of time. After that it was strictly a bookkeeping transfer.

Q. And the station, the company that was operating the station was the John Dompier Oil Company? A. That's right.

Q. And the company that was buying the gasoline was John Dompier Oil Company? A. That's right.

Q. During the early 1970's up until late '72, early '73, did the stations that you supplied receive price assistance from you? A. Yes.

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[Dompier, R. 793]

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Q. (BY MR. WHALEY) Mr. Dompier, would you tell the [Dompier, R. 794] jury what retail tank wagon is? [A.] Retail tank wagon is a price at which Texaco sells a retailer.

Q. Retail tank wagon was a price that you would look to to see what you would buy gasoline for, is that correct? A. We bought it at a discount below that price.

Q. So, for you to figure out your price of gasoline when Texaco told you retail tank wagon price changed, how would you figure out where your price was? A. We would deduct our margin or our discount below retail tank wagon.

Q. So the pretrial order indicates that during the period of 1970 to about May of May 22, 1973 you were buying gas for 3.95 cents less a gallon than retail

tank wagon. Does that jibe with your memory? A. Would you give me those dates again, please?

Q. They have been agreed to here. Did you buy gasoline in the early Seventies for .0500 less than--four cents a gallon less than retail tank wagon? A. Yes, we did.

Q. To make that clear, when plaintiff was buying retail tank wagon during that period of time, you would be paying close to four cents less than retail tank wagon?

[Dompier, R. 795] A. That's correct.

Q. Then when you were salary operating stations in '75 you would buy gasoline for what price? A. For .0395, I believe, less than Texaco's retailer tank wagon price.

Q. So when you were figuring your margin to post at retail at, say, your Third Avenue station in 1975, your

purchase price would be how much less than retail tank wagon? **A.** 3.95 cents per gallon.

Q. So if you posted a retail price that was equivalent to retail tank wagon, how much would your margin be?

MR. ROBINSON: Object, Your Honor, calls for speculation and not proven by the fact.

THE COURT: Overruled.

A. 3.95 cents.

Q. (BY MR. WHALEY) So you make close to four cents a gallon if you posted at retail tank wagon? **A.** That's correct.

Q. And if a retailer was buying gasoline and posted a price at retail tank wagon how much margin would he have? **A.** Nothing.

Q. He would be selling it for his cost? **[Dompier, R. 796]** **A.** That's correct.

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[Dompier, R. 797]

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Q. (BY MR. WHALEY) Now, during the early 1970's you, or John Dompier Oil Company sold gasoline to Red Carpet, is that correct? **A.** That's correct.

Q. And that was a company that was wholly-owned by your father? **A.** Yes.

Q. And wholly-owned by--John Dompier Oil Company was wholly-owned by your father? **A.** Yes.

Q. And during that period of time would you tell the jury what price assistance was? **A.** During that period of time Texaco had a number of pricing areas in Spokane, and when by their determination, the retail price got to a certain level, then they would pass on price assistance to **[Dompier, R. 798]** both ourselves and their retailers of a certain amount per gallon.

MR. WHALEY: Can you move Exhibit 791 down so we can look at the other map, Mr. Bailiff.

Q. Mr. Dompier, look at that map and see if you can locate what has been identified previously as a map of Texaco price zones? Would you look and see if you can locate the location of the Red Carpet station on North Division? **A.** I believe this would be it right here.

Q. And do you know how close that station is to a station that was operated by Mr. Hardwick? **A.** About two blocks.

Q. And from that map was that in the same price zone as the Red Carpet station? **A.** Yes.

* * *

[Dompier, R. 799] Q. (BY MR. WHALEY) During the early Seventies was there a substantial competition in the gasoline market? **A.** Yes.

Q. And did Texaco assist dealers in competing, when the price got close to their margins, extend additional price allowances to help dealers compete? **A.** That's correct.

Q. And in like manner stations that were supplied by the John Dompier Oil Company, if they were in a price zone where the retail prices were getting low, close to the margin--the purchase price of the dealer, did they too apply through you for price assistance? **A.** I don't think that is a correct statement. I don't think they would apply through us for price assistance, but Texaco would give us, to the best of my knowledge, the same price assistance that they gave the retailer.

Q. Then would you pass that on to your dealer? **A.** That's correct.

Q. So, for instance, if Texaco were giving price assistance in Harold

Hardwick's price zone, the Red Carpet station would receive an additional allowance if price assistance was being given in that zone? [Dompier, R. 800] A. That's right.

Q. And Mr. Hardwick would get an additional allowance? A. That's right.

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[Dompier, R. 802]

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Q. (BY MR. WHALEY) Exhibit 133 would be a record of the number of gallons pumped at stations that the John Dompier Oil Company supplied during the period reflected on the exhibit? A. Yes.

Q. So looking at Exhibit 133, which is dated April 7, 1971 it will show the dates that price assistance would be given, for instance, Red Carpet car wash No. 1, the number of gallons that price assistance would be given and the amount of the price assistance? A. Yes.

Q. Going over from the left-hand side to the right, the first entry is Red Carpet car wash No. 1? A. That's right.

Q. And that's the station where, on Division? A. Division and Cleveland.

Q. That is the one that is in Mr. Hardwick's price zone? [Dompier, R. 803] A. Yes.

Q. And this form will be presented to Texaco by you? A. Yes.

Q. And it would be to get additional discounts or rebates to, for instance, Red Carpet No. 1 to assist them in competing in that price zone? A. Yes. This form was submitted, however, after Texaco had told us that they were supporting a certain price. This was submitted to show them how many gallons we sold at that price.

Q. So that they would look at the price zone and see if the prices were down in

that zone and verify that, is that correct? **A.** Yes.

Q. And they would advise you that they would give so much assistance in that price zone? **A.** Yes, but before this was filled out.

Q. Right. **A.** Okay.

Q. So then you would check the meter readings and receive money from Texaco to assist the dealer in competing in his price zone? **A.** Yes.

Q. And that would be money that you would pass on to the dealer? **[Dompier, R. 804]** **A.** Yes.

Q. And that would result in a lower purchase price by the amount of the price assistance, is that correct? **A.** That's correct.

Q. And that also was done by Texaco for its own independent dealers, is that correct? **A.** Yes.

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Q. (BY MR. WHALEY) Do you know one way or the other, Mr. Dompier, how much assistance Texaco was giving its other dealers? **A.** No, I don't, but my recollection is that we were not getting as much as the retailer.

Q. But do you know what they were getting? **A.** No, I don't.

Q. Now, the Red Carpet No. 1 station here would be getting the price assistance at the same time that **[Dompier, R. 805]** it was competing with Mr. Hardwick's station, is that correct? **A.** That's right.

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[Dompier, R. 806]

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Q. So during the early '70's Texaco was giving you for these dealers an additional discount to help them meet competition in that same price zone? **A.** That's right.

Q. And then the station on Monroe Street would be in the same price zone as Mr. Rigg, is that correct? A. That's correct.

Q. Now, turning to page two of this document, this is a form that is filled out specifically. Will you tell us what page two is? A. (No response.)

Q. Will you tell us what page two of Exhibit 135 is--133? A. Page two appears to be the meter readings for a particular period. This one is dated the 27th of March, 1971, and it's the beginning and ending meter readings so we could determine the number of gallons [Dompier, R. 807] that were sold during that time.

Q. And for that station--what station is the name of the dealer for the second page, which I believe the date is March 29th. A. March 29th? Red Carpet car wash No. 1.

Q. That was a corporation that was wholly-owned by your father? A. Yes.

Q. And at that time your father owned John Dompier Oil Company, too? A. Yes.

Q. Was it incorporated then in '71? A. My recollection is that the oil company was incorporated in October of '71. This is March of '71.

Q. So at this time he owns John Dompier Oil Company individually and he owns the stock in Red Carpet? A. Yes.

Q. Now, at the bottom, the form is supposed to be signed by the dealer and then by the distributor, is that correct? A. That's correct.

Q. And who from your recognition of the signature signed as the dealer? A. They are the initials of my father.

Q. And then who signed as the distributor? [Dompier, R. 808] A. My father.

Q. So your father was signing as a dealer and also signing as the distributor? A. That's correct.

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Q. (BY MR. WHALEY) During 1971, '72, were you giving your--any of your dealers that you supplied gasoline a lower price than retail tank wagon? A. Yes, we were.

Q. Getting back to my chart of retail tank wagon for a moment--can I look at that a moment? To your recollection in 1971, '72, can you tell me what discount you were giving below retail tank wagon to the dealers you supplied? A. It varied during that time, but I was between two and three cents.

Q. Would that mean that that dealer would buy gasoline from you at a price two to three cents [Dompier, R. 809] below retail tank wagon? A. That's correct.

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Q. (BY MR. WHALEY) Let me repeat the question. During the period 1971 to 1972, the dealers that you were supplying were purchasing gasoline from you at a price two to three cents below retail tank wagon, is that correct? A. That's correct.

Q. And retail tank wagon you are referring to is the same as Texaco's retail tank wagon? A. Retail tank wagon I referred to as John Dompier Oil Company's retail tank wagon, however, are it was the same as Texaco's.

[Dompier, R. 810] Q. So they were getting the gas two to three cents less than the Texaco dealers during '71 and '72? A. That's correct.

Q. So when they posted their margin on the street, they would begin from their purchase price below retail tank wagon, is that correct?

THE COURT: You said posted their margin on the street.

Q. (BY MR. WHALEY) That wasn't very clear. A dealer that you supplied in 1971, if he posted his street price as retail tank wagon, would have a margin of two to three cents, is that right?
A. That's right.

Q. Whereas a plaintiff, if he posted retail tank wagon would have no margin, is that correct? A. That's correct.

Q. Now, during the period of time that Red Carpet was receiving gasoline from your father's company in the early Seventies, was it getting a discount off of retail tank wagon? A. Yes.

Q. So when the price assistance forms were filled out, the Red Carpet station was buying gasoline at a discount off of retail tank wagon from you, is that correct? [Dompier, R. 811] A. That's correct.

Q. And then in addition they were getting price assistance from Texaco through you to help compete in the same price zone? A. That's correct.

Q. And the same would be true with the Third Avenue station, it was buying gasoline below retail tank wagon in 1971, '72? A. Yes.

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[Dompier, R. 818]

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Q. (BY MR. WHALEY) Mr. Dompier, did you at some point in time begin to raise the price that you were selling gas to the stations at East 303 Third, Monroe and Alice, and on Freya? A. Yes.

Q. And at some point did you begin to sell gas to those stations at a price in excess of retail tank wagon? A. Yes.

Q. And when did you raise the price to those stations to where they were paying more than retail tank wagon, your best

recollection? **A.** To my best recollection, would have been shortly after the Arab embargo began, when the Department of Energy, or at that time the Federal Energy [Dompier, R. 819] Administration began controlling our prices. Gasoline was in very tight supply, and the Federal Energy Administration allowed us to--allow jobbers to increase their prices to their retail customers by a certain amount. I think it was a penny, but I am not sure about that at all. And when they allowed us to do that, we passed that on, and at that time, to the best of my knowledge, raised our retail tank wagon higher than Texaco's.

Q. Would it have been around April of 1974? **A.** Yes, that is probably about right.

Q. And after you had raised the price of gasoline to these stations in excess of retail tank wagon, did you purchase

any of the stations? **A.** In July of 1974 we purchased the station at 303 East Third Avenue from a man by the name of Larry Guessner (phonetic). And in July of 1975 my father purchased two stations that Mr. Koziuk had listed with a real estate company, the one at North 4406 Monroe and the one at 502 North Freya.

Q. At the time that Mr. Dompier purchased those stations at East 303 Third and on Freya--excuse me, on Monroe and on Freya, those stations then became salary operated stations by the John Dompier Oil Company? **[Dompier, R. 820]**

A. That's right.

Q. So when they became salary operated, the John Dompier Oil Company was able to use for its margin the full 3.95 cents discount off of retail tank wagon, is that correct?

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A. Yes, that's right.

Q. (BY MR. WHALEY) And prior to your buying the station, the dealer was buying the product for retail tank wagon or above, is that correct? A. That's right. To the best of my knowledge, that's right.

Q. You purchased the Third Avenue station when? A. July of 1974.

[Dompier, R. 821] Q. And when you purchased it in July of 1974 did you own it yourself? A. Yes.

Q. And then whom did you lease it to? A. John Dompier Oil Company.

Q. So the John Dompier Oil Company was paying you rent for leasing that station? A. That's correct.

Q. When you began to operate that station in July of 1974, did the company change the operation at all? A. The only change we made was that we operated it with salary people.

Q. And did you use the same employees that had been there before? A. Yes, I think we did.

Q. And the only difference was you owned the station instead of a dealer, is that correct? A. That's correct.

Q. And you purchased the gasoline at discount off the retail tank wagon and he didn't? A. That's right.

Q. On the Third Avenue station who pumped the gas for the public? A. The attendant.

Q. Was it served by an attendant? [Dompier, R. 822] A. Yes.

Q. And if requested, would that attendant wash a windshield? A. I hope so.

Q. And if requested would they check under the hood? A. Yes.

Q. And did you sell oil? A. Yes.

Q. What sort of inventory did you have to keep for that station other than

gasoline? A. We kept a motor oil inventory, in conjunction with our station we also had a car wash, we kept a car wash supply inventory, and a few other minor automotive chemical items, and in the winter time antifreeze.

Q. How much money would you have had in inventory at that station? A. At this point strictly a guess, but I'd say $250.

Q. Would that be your best recollection? A. Yes.

Q. All right. And that would be the same type of inventory that an ordinary dealer would keep, is that not true? A. That's right.

Q. When you were operating the station, did you [Dompier, R. 823] have any additional costs that the prior owner didn't have in operating the station? A. Not that I can think of.

Q. When you were--before you operated the stations, when you were supplying

the stations, did you counsel your dealers on how to sell gasoline? A. No.

Q. You didn't go out and give them sales pitches about how to sell their product? A. Not on gasoline, we let them handle that themselves.

Q. Would the only connection you would have with them, basically as far as sale of gasoline, would be to pick up their money and take their orders for fuel? A. That's right.

Q. And in taking an order for fuel, would that constitute a telephone call to your bulk plant, telling them that you need another load of fuel? A. Generally.

Q. And then collecting money. Would it be getting it in the mail or going by and picking it up? A. Usually it was picking it up.

Q. After you started salary operating the stations, there wasn't any need, was

there, for anyone to go **[Dompier, R. 824]** out and collect the money from you, is that correct? **A.** That's correct.

Q. Moving on, when you were operating the station on Third Avenue, what percentage of your sales were Texaco credit card? **A.** A little bit less than 50 percent, I think.

Q. Did you find at any time when you were salary operating these stations that people would deviate from their route to purchase gasoline? **A.** Are you speaking now of the Third Avenue station?

Q. Any of your salary operated stations. **A.** There were times when it appeared as though they would deviate their route to a slight extent.

Q. What gave you that indication that people would deviate their route? **A.** When the prices were low, the volume would go up.

Q. What stations in the vicinity--well, anywhere, did you consider to be competitors of yours when you were supplying the Third Avenue station? **A.** Third Avenue station, you want specific stations that I considered to be--

Q. Yes, sir, in the area where they were. **A.** All right. The Third Avenue station, the ones that I watched most generally were the Fill-em' Fast at Second and Browne, an independent station at **[Dompier, R. 825]** Second and Lincoln, another independent station at Third and Monroe. And for that particular location those were the three that I watched most generally.

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THE COURT: Let me interrupt a little bit. What do you mean, you said you watched two independents?

THE WITNESS: I would watch their posted retail prices.

THE COURT: What independents?

[Dompier, R. 826]

THE WITNESS: The one on the corner of Second and Lincoln. It is now called a Quik Stop. Back in those days, I think it was called Pay and Take It then. There was one on Third and Monroe, on the northeast corner, and I don't know what that was called now.

THE COURT: All right.

Q. (BY MR. WHALEY) Was there a Fill-em' Fast you said? **A.** And a Fill-em' Fast on Second and Browne.

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[Dompier, R. 829]

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Q. (BY MR. WHALEY) All right. Did you consider any stations that were flying the Texaco brand to be [Dompier, R. 830] of any significance to you, to your

stations that were flying the Texaco brand? **A.** At any of our stations?

Q. Yes. **A.** There was only one that I really paid attention to at all. That was the station run by Al Allen on Northwest Boulevard.

Q. What about that station that made you pay attention to it? **A.** Because at certain times he was relatively competitive on gasoline, and he appeared to be doing a pretty good volume.

Q. And if Mr. Bevan had posted the same price as you, do you think you would have watched him similarly to having watched Mr. Allen? **A.** Not right from the start.

Q. You had to wait a while? **A.** To see what he was going to do, right.

Q. To see if he was going to come up or not? **A.** Correct.

Q. At your Freya Street station, did a member of your family buy the Freya Street station? A. Yes.

Q. Who was that? A. My father.

[Dompier, R. 831] Q. Then that was leased to? A. The company.

Q. John Dompier Oil Company? A. John Dompier Oil Company, (nods head affirmatively).

Q. And how much inventory did the John Dompier Oil Company keep for that station? A. Exclusive of gasoline?

Q. Yes. A. $200 to $300.

Q. Did you operate the station the same after you purchased it as it was operated before? A. We operated the same with the exception of the fact that it was company operated with salary employees.

Q. And the Monroe Street--excuse me. What stations or competitive area did you consider important for your Freya

Street station? A. Freya? I considered Market Street, all of the stations along Market Street. The one that was operated by Mr. Harder and supplied by us was a competitor. There was a Jackppot station on Market Street, and I believe at that time it was called a Vista. And then another one at Market and Wellesley. That is now a Quik Stop. Back then I think it was [Dompier, R. 832] called Pay and Take It, I believe.

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[Dompier, R. 836]

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Q. Now, going to your Monroe and Alice street station, can you tell me when you started salary operating that station? A. July of 1975.

Q. And did you change the operation of it after you purchased it? A. Only by putting in salaried employees.

Q. Was that station attendant serve?
A. Yes.
Q. And would your employees there wash the window if asked? A. Yes.
Q. And did they check the oil? A. Yes.
Q. Would they do anything the customer asked them to do? A. Pretty generally.
Q. I mean, as far as the automobile is concerned? A. Yes.
Q. What was the percentage of your credit card business at the Monroe and Alice station? A. That one was about 60 percent.

[Dompier, R. 837]

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Q. If other Texaco stations priced as low as you [Dompier, R. 838] did, would you consider them to be competitive with you? A. Some of them I would have.
Q. Which ones? A. Are you talking again now about Monroe?

Q. Yes, sir. A. The one that Al Allen ran on Northwest Boulevard.
Q. If Hank Rigg had posted a price as low as yours, would you have considered him to be a competitor? A. Not right away really.
Q. You would wait to see if he could keep his price there? A. Right.
Q. If he kept his price there, would you consider him to be a competitor?
A. Probably after a period of time.
Q. What are the factors that determine from your standpoint whether or not a competitor can keep his price down long enough to become a competitor of yours?
A. Well, he certainly has to have a buying price that allows him to price at a certain retail level and make a profit.
Q. And if he doesn't have the buying price to price at the certain level to make a profit, then [Dompier, R. 839] he

can't compete with you? **A.** That's right.

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[Dompier, R. 843]

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Q. (BY MR. WHALEY) I am going to move on and I may be repetitious and I want you to assume something and I will read this back later. If you'll look at Mr. Al Allen's. And this is Exhibit 645, and I am going to ask you to assume something. I want you to assume that in November of 1975 that regular gasoline, retail tank wagon was 50.9 up until November 14, then it went to 51.9. Okay, just assume that for my question. Looking at your average DTW on Exhibit 588 [<u>sic</u> 558] that would reflect DTW 50.9, is that correct? **A.** That's correct.

Q. And if Texaco was selling gas to Mr. Allen on the same day at retail tank

wagon at 50.9, that would mean that they were the same for that period of time? **A.** That's correct.

Q. Now, when you posted the price of 51.6, how much margin was that above retail tank wagon? **A.** 7/10ths of a cent.

Q. All right. So, if a dealer was buying retail tank wagon, he would--and pricing it at 51.6 like you were, he would get 7/10ths of a cent a gallon, **[Dompier, R. 844]** is that correct? **A.** That's correct.

Q. However, when you were pricing at that station, what would your margin be in November of 1975? **A.** It was 7/10ths of a cent plus your distributor margin.

Q. How much is that? **A.** 3.95 cents a gallon.

Q. Plus 7/10ths? **A.** Plus 7/10ths.

Q. Would be how much? **A.** 4.65.

Q. In November of '75 at the bottom, how many gallons of gasoline did you sell? **A.** 162,749.

Q. All right. So your--if you take your margin of four point--

THE COURT: Mr. Whaley, you are going awfully fast for me, and--

MR. WHALEY: I will start over.

THE COURT: All right, I see it now. Is this the total gallonage and at this station?

THE WITNESS: Yes.

THE COURT: Freya Street station, all right. Go ahead. Slow it down a little bit. I can follow **[Dompier, R. 845]** it and I think the jury is probably in the same boat I am of trying to follow exhibits that we have never seen before.

Q. (BY MR. WHALEY) Yes, sir. On Exhibit 588 [sic 558] I'm going to start over just to make sure it is clear. You

would post the--you would write down the price at which you were selling gasoline to the public, is that correct? **A.** Yes.

Q. And that would be 51.6? **A.** In this case, yes.

Q. How about writing on the board the Dompier retail price 51.6? **A.** (Witness complies.)

Q. Then I'd like you to subtract from that your margin in that month to show your purchase price. Put Dompier purchase price below that. And that would be your purchase price from Texaco? **A.** Yes.

Q. All right. Write from Texaco right under that. **A.** (Witness complies.)

Q. Would you subtract your margin to reflect your purchase price in that month? **A.** (Witness complies.)

Q. In addition, it appears that you were posting a **[Dompier, R. 846]** price that would give you an additional margin

of 7/10ths of a cent, is that correct, looking at the exhibit? **A.** Yes, that's correct.

Q. So you would have to subtract 7/10ths of a cent to get your purchase price, would you not? **A.** No.

Q. 51.6 is your retail price? **A.** Oh, that's right, excuse me.

Q. What does that leave you as a margin between your purchase price and your selling price? **A.** .0465, 4.65 cents.

Q. That would be 4.65 cents a gallon of gas would be your margin between what they bought the gas for and what you sold it for, is that correct? **A.** That's correct.

Q. Now, I'd like you to multiply that times the number of gallons you sold that month, which is 162,749. **A.** (Witness complies.)

Q. Do you have an adding machine, Mr. Dompier? **A.** Yes, I do.

Q. That would mean your gross profit for Freya for the month of November 1975 would be $7,567.82? **A.** That's correct.

[Dompier, R. 847] **Q.** Now, I want you to take a dealer buying the product at retail tank wagon, which is 50.9, put dealer's retail price in the next column down below there. **A.** (Witness complies.)

Q. And let's say he posts a price exactly like yours, 51.6, meets your price. I'd like you to put dealer tank wagon below that, 50.9? **A.** (Witness complies.)

Q. And what margin does that give him? **A.** 7/10ths of a cent.

Q. Would you multiply that by the same number of gallons that you sold? **A.** (Witness complies.)

Q. That dealer buying at his price and selling at your price in November would have made $1,139.24? **A.** Yes.

Q. What's the difference in the gross profit that you would have received in that month and the dealer that I set up in this series of questions? A. $6,438.59.

Q. Thank you. You can move back to your seat.

Would you expect a dealer with that difference in gross profit to be able to price with you at 51.6 for very long? [Dompier, R. 848] A. No.

Q. What would happen if he did? A. He would probably go out of the gasoline business.

Q. During the period of the Seventies how often would you pick up gas at John Dompier Oil Company for delivery to retail stations? Would it be a daily basis? A. Pick up gas at the terminal? Q. Yes. A. Almost daily.

Q. Did you ever have any specific conversation that you recall with a

Texaco representative about buying the Monroe Street station and the Freya Street station? A. Yes, I did.

Q. Would you tell the jury the day, the approximate date of the conversations and whom you talked to? A. Well, it probably was--we bought the stations, or dad bought the stations in July of '75. I suppose we talked to Texaco maybe in June of '75, and I think the conversation was with Ralph Bauman and Bob Vogelman.

Q. And would you tell the jury the substance of the conversation, what they said and what you said? [Dompier, R. 849] A. Well, we told them that we were considering buying the stations and they encouraged us quite a little bit to purchase those stations. And even if we had to--I remember them saying even if we had to pay a little bit more than the

market price for those two stations, which we did--

Q. You paid a little more than the market price? A. Paid a little more than we thought the market price was, anyway.

Q. Do you remember any phrase that was given to you about the purchase of those stations? A. Yes. Something to the effect, Ralph Bauman said something to the effect that a thorn may turn into a rose tomorrow, or something to that effect.

Q. Do you have any recollection of the amount of gross income you thought you needed to receive from the Third Avenue station in 1975 to pay your expenses? A. Approximately $4,000 a mon h.

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[Dompier, R. 878]

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Q. (BY MR. ROBINSON) Now, Mr. Dompier, in the 1970's in Spokane was there a revolution or change in retailing, method of retailing gasoline? A. Yes, there was.

Q. And did we go from 100 percent self-serve and in the late Sixties into over 50 percent of self-serve--I am sorry, I meant from 100 percent full service in the late Sixties to over 50 percent self-serve by the mid 1970's? A. Well, I am not sure about those percentages, but we went from predominantly full-serve in the Sixties to a very high percentage of self-serve in the Seventies, yes.

Q. Would you agree, sir, that as we went from the mid-seventies that the predominant business [Dompier, R. 879] was then self-serve? A. Yes.

Q. And did we see on the scene here in Spokane fewer and bigger stations--

A. Yes.

Q. --selling larger quantities of gasoline? A. Generally.

Q. At lower overhead? A. Yes.

Q. And with lower mark-ups or margins?

A. Yes.

Q. And were some of the examples of those types of stations Husky Oil Company stations? A. (No response.)

Q. That displayed the Husky brand?

A. No, I don't think so.

Q. Okay, how about Vista? A. Vista, yes.

Q. Jackpot? A. Yes.

Q. Circle K? A. Yes.

Q. 7-11? A. Yes.

Q. Fill-em' Fast? [Dompier, R. 880]

A. Yes.

Q. Gasamat? A. Yes.

Q. Jet? A. Yes.

* * *

Q. As these new service stations arrived on the scene, did they--by simple circumstances draw gasoline business away from other stations in the area? A. Yes, I think they did, you bet.

Q. You certainly felt an impact on your business, didn't you, sir? A. Yes.

* * *

[Dompier, R. 898]

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Q. Now, this morning you testified about a service station at North 4406 Monroe that I believe was formerly operated by Mr. Ray Koziuk? A. That's right.

Q. And a station at North 502 Freya that was also purchased from Mr. Ray Koziuk? A. That's right.

* * *

[Dompier, R. 900]

* * *

Q. Can you tell me why it was that you or your father--I believe it was your father purchased these two service stations from Ray Koziuk? A. Why?

Q. Yes, sir. [Dompier, R. 901] A. In detail?

Q. Well, in thumbnail sketch, if you will. A. Well, number one, they were good stations, they were good locations. We had--and I think the second reason that came in, we, as I testified this morning, we wanted to be able to exercise some kind of control over our own retail gallons, and by control I mean we wanted to be sure that we were going to sell "X" number of gallons this month and the same number, or close to it, the following months. And the third reason was that we had had

considerable difficulty with the retailers that was in there previously.

Q. By the name of? A. By the name of Ray Koziuk, and it simply solved a major problem for us. He was bootlegging gasoline. In other words, at least by our opinion, he was putting gasoline in there that was not Texaco and selling it as Texaco, and it was becoming a major problem for us, so this solved that problem.

Q. Was the main reason that you purchased both of those stations the fact that the previous owner, Mr. Ray Koziuk, was buying a considerable amount of non-Texaco gasoline and pawning it off to the public as Texaco gasoline; that is, selling it to the [Dompier, R. 902] public as if it were Texaco gasoline? A. Well, I am not sure it was the main reason. It was certainly a very important reason.

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[Dompier, R. 905]

* * *

Q. Let me direct your attention now to Red Carpet Service, Inc. Do you recall when that was originally incorporated? A. Sometime the early to middle part of '68 would be my guess.

Q. And that was actually formally incorporated as a Washington corporation? A. I believe so.

Q. Are you or have you ever been an officer of Red Carpet, Inc.? A. No.

Q. Have you ever played any part in the management of Red Carpet Service, Inc.? [Dompier, R. 906] A. No.

Q. Has Red Carpet Service, Inc. ever been a part of the same corporate entity known as the John Dompier Oil Company? A. No.

Q. Has Red Carpet Service filed separate tax returns from those tax returns filed by John Dompier Oil

Company for each year the two companies were in existence? A. Yes.

Q. Did they maintain separate payroll accounts? A. Yes.

Q. Separate bank accounts? A. Yes.

Q. Separate charge accounts? A. Yes.

Q. Have you ever been consulted about the management of any of the Red Carpet stations? A. No.

Q. Do you view yourself as having played any part in the Red Carpet Service stations operations? A. No.

Q. Did you, when you dealt with the Red Carpet Service stations, deal with them as you would with any other dealer that you supplied? [Dompier, R. 907] A. Yes.

* * *

[Dompier, R. 912]

* * *

Q. Okay. Now, how many salary operated stations did John Dompier Oil Company have in 1972? A. '72? None.

Q. 1973? A. None.

[Dompier, R. 913] Q. 1974? A. One.

Q. And that was the one on Third Avenue? A. Yes.

Q. And what was the cross street? A. The address was 303 East. The cross street, I believe, was Spokane Street.

Q. 303 East Third Avenue at the intersection of Third and Spokane? A. Yes.

Q. And that was first open for business in July of '74, or thereabouts? A. That is when we first opened it.

Q. Yes, that was what I am interested in. A. Yes, July of '74.

Q. And that is when you first started salary operating the station? A. Yes.

Q. And that is the very first salary operated station that John Dompier Oil Company had, is that correct, sir? A. That's correct.

Q. And then when did you next open a salary operated station? A. In July of '75.

[Dompier, R. 914] Q. And which one or ones was that or were that? A. North 4406 Monroe and 502 North Freya.

A. The one at Monroe was Monroe and Alice? A. Yes.

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[Dompier, R. 1111]

* * *

Q. Looking at the corporate filing for Red Carpet, who was the president of Red Carpet in 1972? A. John K. Dompier.

Q. That's your father? A. Yes.

Q. Who was the president of John Dompier Oil Company? A. John K. Dompier.

Q. Your father? **A.** Yes.

Q. Who was the secretary-treasurer of John Dompier Oil Company? **[Dompier, R. 1112]** **A.** Marjorie Dompier.

Q. That's your mother? **A.** Yes.

Q. Who was the secretary-treasurer of Red Carpet? **A.** Marjorie Dompier.

Q. The operations of the retail station owned by Red Carpet would have been under the supervision of your father, is that correct? **A.** Yes.

Q. And the operation of John Dompier Oil Company with respect to its sales of gasoline in 1972 would have been under direction of your father? **A.** Yes.

Q. Was it your father who set the price from John Dompier Oil Company to Red Carpet in 1972? **A.** Yes.

Q. And it was your father that set the retail price of gasoline at Red Carpet?
A. I assume so.

Q. Now, looking at 1973 would you tell me who the president is of John Dompier Oil Company and the president of Red Carpet? **A.** The president of Red Carpet was John K. Dompier and John Dompier Oil Company was John K. Dompier up until August of '73.

[Dompier, R. 1113] Q. That would have been your father was president of both up until August of '73? **A.** Yes.

Q. And then did your father remain the president of Red Carpet after 1973?
A. Yes.

Q. And in 1973 did his position as president of John Dompier Oil Company change? **A.** Yes.

Q. And looking at Exhibit 470, what was he listed as in 1973, the office he had? **A.** In 1973?

Q. Yes. That's the exhibit for John Dompier Oil Company, is that correct?

Q. Yes. I believe he was vice-president. **A.** In 1973 he is listed as president.

Q. How about 1974? **A.** 1974 he is not listed.

Q. He is a director? **A.** Yes.

Q. And who are the directors of John Dompier Oil Company? **A.** John K. Dompier, Marjorie Dompier and J. Neil Dompier.

Q. Who were the directors of Red Carpet in 1974? **[Dompier, R. 1114]** **A.** John K. Dompier, Robert Brown and Marjorie Dompier.

Q. You had two common directors between John Dompier Oil Company and Red Carpet? **A.** Correct.

* * *

[Dompier, R. 1146]

* * *

Q. Mr. Dompier, talking about the hauling allowance. Texaco was obligated

under its contract to haul the product to your bulk plant, is that correct? **A.** I believe that's correct.

Q. So the hauling allowance was something that you were paid to haul the product yourself, is that correct? **A.** Yes.

Q. And if you wanted not to haul the product, you **[Dompier, R. 1147]** could have just insisted upon Texaco hauling the product, is that correct-- **A.** I believe so.

Q. --in the contract? How long does it take to unload that 10,000 gallon truck? **A.** 45 minutes, 30 minutes. However--excuse me. It varies a whole lot between service stations.

Q. How long did it take to unload the truck at your bulk plant? **A.** About 45 minutes.

Q. And if you had 3,000 gallons of gas in the high test tank or the regular

tank, you wouldn't be able to unload a full truckload in your bulk storage, would you? **A.** Not a full truckload of regular. We might have been able to fill the regular tank and unload something else.

Q. Then you would have some left over in the truck? **A.** Not necessarily, no. We could have hauled diesel or premium gasoline at the same time.

Q. At Red Carpet was it the practice that if you bought a certain amount of gasoline you would get a reduction on the car wash price? **A.** It seems to me that that was the practice part of the time. That program changed frequently.

[Dompier, R. 1148] **Q.** When it was the practice, what's your recollection of the amount of gasoline you purchased before you would get a free car wash?

* * *

A. My recollection now was it was 15 gallons, but I am not at all sure on that figure.

Q. (BY MR. WHALEY) If you purchased 15 gallons, your best recollection is you would get a free car wash? **A.** For part of the time the Red Carpet opened. They changed that program several times.

MR. WHALEY: That's all.

THE COURT: Anything?

MR. ROBINSON: I don't think so, Your Honor.

THE COURT: Mr. Dompier, the hauling allowance that you were paid by Texaco, was that so many cents or a portion of a cent for a gallon of everything you purchased?

THE WITNESS: Of everything that we hauled.

THE COURT: So you were paid that whether you hauled it to the bulk plant or whether you left **[Dompier, R. 1149]**

the bulk plant and went to one of your service stations?

THE WITNESS: Yes. We were paid that, Your Honor, for everything that we hauled from the terminal. You mentioned bulk plant. If we hauled it from our bulk plant--

THE COURT: I used the wrong term. When I said bulk plant, I was referring to Texaco's bulk plant?

THE WITNESS: Right, we were paid a common carrier freight allowance for that.

THE COURT: On every gallon you hauled whether it went to your bulk plant or whether it went to your retail stations?

THE WITNESS: That's correct.

THE COURT: Is there any way that you can recall as to what your pattern was? Maybe you can break it down into time periods if you changed, as to how

often you would--what percent of the gas that you purchased was hauled to your bulk plant and dump it as opposed to just taking it from the Texaco terminal and hauling it to your stations?

THE WITNESS: No, Your Honor, I can't come up with any percentage, not now.

THE COURT: Was it more than half would go **[Dompier, R. 1150]** direct to the retail stations?

THE WITNESS: Yes.

THE COURT: I don't want to keep--three quarters? Let me ask you this: Was it your usual pattern to haul it directly to your retail stations as opposed to taking it to your bulk plant first?

THE WITNESS: Yes, it was.

THE COURT: But you can't break it down into percentages or anything?

THE WITNESS: No, I really can't at this time.

* * *

[JOHN PHILLIP MORITZ, R. 1153]

* * *

Q. Would you tell us your occupation, Mr. Moritz? **A.** I am a salesman.

Q. Who do you work for? **[R. 1154]** **A.** At this time I work for American Health.

Q. And what kind of business are you in? **A.** In the vitamin and supplement business.

Q. Where do you live? **A.** I live at South 5404 Willamette, Spokane.

Q. What business were you in in the period of the 1970's? **A.** I worked for Burroughs Pharmaceutical. I was a pharmaceutical salesman.

Q. Did you travel much? **A.** Yes, I did.

Q. Would you tell the jury where you bought gasoline during the period from

1970 to 1980? **A.** I bought the majority of my gasoline on East Third or up on North Monroe, the Texaco dealer that had car washes.

Q. Prior to the 1970's where had you been buying your gasoline? **A.** From '64 until that time, primarily from Bevan's Texaco up on North Wall and then downtown.

Q. On north wall and then Third and Lincoln? **A.** Yes.

Q. And how much gasoline would you be buying in a month? **A.** At least two tank fulls a week depending upon my **[Moritz, R. 1155]** schedule.

Q. What kind of car were you driving? **A.** I was driving a Ford Galaxy 500.

Q. How large a tank did it have? **A.** It was over 20 gallons.

Q. And you say in the Sixties you bought from Mr. Bevan? **A.** Yes, I did.

Q. Did you change your buying practices from Mr. Bevan to other stations? A. Yes, I did.

Q. And would you identify the stations you changed to? A. I went to the Texaco station up on North Monroe, the one that was, and the one that was on East Third.

Q. Why did you change buying from Mr. Bevan to those stations? A. Well, the company that I worked for figured out that if we could save 1/10th of a percent of each dollar's worth of gas that we would buy in a period of a year, we would save them over $10,000.

Q. Did you have to turn your gasoline expenses into the company for-- A. Yes, I did. When my boss worked with me he would also note gasoline prices.

[Moritz, R. 1156] Q. Was there a difference in the price at Mr. Bevan's

station and the stations you just described? A. Yes, there were. There was.

Q. What was the price difference as you recall? A. Roughly three or four cents a gallon.

Q. Did you have a Texaco credit card? A. Yes, I did.

Q. What percentage of your business that you bought in Spokane would have been bought on a Texaco credit card? A. I paid mostly cash unless it was for a tune-up. I found if I did that, then I wouldn't get into problems with not having enough money to tide me over through the month, so I paid cash for it primarily.

Q. Why did you buy Texaco gas? A. Well, I guess when I was young I believed some of the commercials on television, and my folks bought Texaco. It was the additives, they had the best

motor oil. I come from a family of Texaco people.

Q. Did you buy nonbranded gasoline? A. No.

Q. Do you have any opinions about whether or not John Bevan's stations were stations that you would consider buying from as well as the station on Monroe and Third? **[Moritz, R. 1157]** A. I would have preferred to buy from John because you would have gotten the service if the price were right, but the price was out of line.

Q. Did you consider that Mr. Bevan was in competition for your business as well as the station on Monroe? A. No doubt about it.

* * *

Q. What percentage of your gasoline sales in Spokane would have been from the Texaco station on Monroe or the

Texaco station on Third? A. I would say roughly 90 percent.

Q. Did you buy from any other Texaco stations? A. Only if you were caught at the situation that you needed gas and you might be out in the Valley somewhere and it wasn't feasible to go all the way back to town.

[Moritz, R. 1158] Q. If Mr. Bevan had been able to post a lower price or had posted a lower price than he did, would you have continued to buy from him? A. Yes.

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[Moritz, R. 1164]

* * *

Q. Where do you now have your car serviced for the oil changes and the lube jobs and the-- A. Svoboda's Exxon.

Q. That's on-- A. 29th.

Q. Do you buy gas from him on occasion? A. Once in awhile.

Q. But you take your back room work up there as you use to take it to John Bevan? **A.** Some of it, yes, sir.

Q. Do you take it elsewhere besides Mr. Svoboda? **A.** Yes.

Q. Where is that, sir? **A.** McCollum Ford.

Q. For the gas station type work that you had John Bevan do, you now take it up to Lincoln Heights? **A.** Yes.

Q. And you didn't have that kind of work done, those kinds of needs fulfilled either at the Third Avenue Texaco station or at the North Monroe station, did you, Mr. Moritz?

[Moritz, R. 1165] **A.** Would you repeat that, please?

Q. That kind of work that you have done now at Mr. Svoboda's Exxon and you formerly had done by John Bevan, you can't get done either at the Third Avenue Texaco or the North Monroe

Texaco? **A.** No, because they are not in business.

Q. During the period of time we were talking about you could not get that service performed at either of those two stations, could you, Mr. Moritz? **A.** I could have them tune up the car.

Q. At the North Monroe station? **A.** No. After he closed it, no.

Q. Before it was closed, could you get back room service tune-ups and that sort of thing from the North Monroe station or the East Third Avenue station? **A.** No.

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[EVA WALCH, R. 1169]

* * *

Q. Mrs. Walch, could you tell the jury your present home address? **A.** 3707 East Olympic, 99207.

Q. What area of town is that in? A. That is up in Hillyard area, East Hillyard, what is known as East Hillyard.

Q. Do you work outside the home? **[Walch, R. 1170]** A. Uh-huh. Yes, I have worked at the Bon Marche for 26 years.

Q. And what department do you work in?

A. I work in the restaurant.

Q. Have you been served with a subpoena to be here today? A. Yes, ma'am.

Q. Do you know Mr. Gene Robinson, a Texaco dealer in the Hillyard area?

A. Yes, I do.

Q. Could you tell the jury how you know Mr. Robinson? A. Well, I have known Mr. Robinson for several years, but for about the past 10 or better years he has been my next door neighbor, and for the past 25 years or better we--my ex-husband and I have always traded at his service station.

Q. Prior to 1975, as I understand from what you just said then, you were not neighbors with Mr. Robinson, is that correct? A. He married my next door neighbor and I really don't remember when that was, the exact year.

Q. Prior to whenever it was that he became your next door neighbor, sometime in the mid-Seventies, where did you buy your gasoline? A. In the mid-Seventies? **[Walch, R. 1171]** Q. Uh-huh. A. I always bought my gasoline--well, not always, but for the most part at a little self service Texaco station on the corner of Market and Fairview. I bought my gas from Mr. Robinson up until about '72.

Q. Prior to the time when you began to buy your gas from the Texaco station near the Bend Restaurant, is that about where that station is at? A. Yes, it is.

Q. About how much of your gasoline were you buying from Mr. Robinson? **A.** Prior to '72?

Q. Right. **A.** Well, I certainly never stopped there 100 percent of the time, but a good 90 percent, anyway.

Q. There has been some testimony in this case about the other station also located in that same general area on North Market. Some of them are branded stations and some of them are independent stations. Did you ever shop at those stations? **A.** I am not going to say I never did, but I would say very, very rarely. Maybe if it was right on empty and I didn't think I might make it down to Gene's or whatever, but always--most always at Gene's station.

[Walch, R. 1172] Q. Did you during this time period observe a difference in the price between Mr. Robinson's station and the station down near the Bend

Restaurant, at the retail price? **A.** Well, I not only noticed quite a difference in price but the thing I noticed even more so was the fact that they were both Texaco stations and that bothered me.

Q. Approximately what in your mind, and I am not trying to pin you down to an exact figure, was the difference between the two retail prices at the Texaco stations? **A.** This question has come up several times, and for the most part I am sure it fluctuated. I know I never would have left Gene's Texaco station for just a two or three cents a gallon difference, so I am venturing to say it was up seven, maybe eight cents a gallon difference, which to me was at that time an hour's wage if I filled up my gas tank. It was a big difference.

Q. Did you, after you noticed this difference in the price, did you

continue to trade with Mr. Robinson? **A.** I think I kind of weaned myself away. But after, I would say the fall of '72, I don't believe I ever traded with him again. I don't really--I can't say I **[Walch, R. 1173]** never did drive into his service station again, but I really don't think so.

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[HAROLD HARDWICK, R. 1231]

* * *

Q. Mr. Hardwick, where do you live? **A.** 5105 North Oak.

[Hardwick, R. 1232] **Q.** How long have you lived there? **A.** Since '69.

Q. Are you one of the plaintiffs in this case? **A.** Yes, I am.

* * *

[Hardwick, R. 1273]

* * *

Q. Now that you reflect back on it, is it true that self-serve business as it

came into Spokane took business away from you? **A.** It hurt all of us with service stations.

Q. You, too? **A.** Yes.

Q. And that was self-serve business other than that one station, that Red Carpet car wash, right? **A.** Yes.

Q. In 1976 were there more self-serve stations than there used to be? **A.** I don't remember offhand, but I would say yes.

Q. And did that fact, the fact that there were more self-serve stations in 1976 also hurt your business? **A.** It probably did.

Q. Would you agree that it, in fact, did hurt your business? **[Hardwick, R. 1274]** **A.** It hurt some, yes.

Q. In 1976 did you find that self-serve stations generally charged less than full-serve stations? **A.** Yes.

Q. Was there about a six to eight cent difference? A. I would say yes.

Q. And while you were a Texaco dealer, did you observe, Mr. Hardwick, that there had been an increase in the number of what we call independent brand stations in the Spokane area? A. Oh, yes.

Q. And did you also observe a trend towards an increased number of self-serve stations in Spokane? A. Yes.

Q. And as far as you know, those stations were taking a larger and larger share of the total gas business as they increased in size and number? A. I would say yes, they did.

Q. And generally speaking, sir, is that--were those gallons being taken away from the full-serve gas stations like yourself? A. They were taken from everybody I would say, yes.

Q. But in general from the full-serve stations? A. Yes.

Q. And were there the type of customers that **[Hardwick, R. 1275]** continued to do business with you, the full-serve type of customers? A. After they left us they wouldn't come back, no.

Q. Pardon? A. If they went to a self service they would never come back.

Q. Okay. And did you go--were you able to retain for the most part your back room business that you enjoyed at that station? A. We lost business in it, yes.

Q. Pardon? A. We lost business in the back room.

Q. Can you tell me, though, whether you were able to retain most of your back room business? A. Oh, I would say we lost about at least 40 percent.

Q. And could you tell me where that 40 percent went to get the-- **A.** I don't know.

Q. It certainly wasn't to that Red Carpet car wash down the street? **A.** He helped it.

Q. Did he have any back room services? A. No, they didn't, but they would go down there for gas or less, they are not coming back to you.

Q. Did he have any type of facilities at the Red **[Hardwick, R. 1276]** Carpet car wash where they could work on cars? A. No, they didn't.

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[WILLIAM FISHER, R. 1366]

* * *

Q. (BY MR. EBEL) Would you state your name and residence address, please? A. William Fisher, 17 West 704 Butterfield Road, Apartment 104, Oak Brook Terrace, Illinois, zip 60181.

Q. Are you presently employed by Texaco? **A.** Yes.

Q. What is your present job? A. Vice-president of the midwest region in the PPD Department.

Q. What is the PPD Department? A. Petroleum Products Department.

* * *

[Fisher, R. 1367] Q. * * * We have had a discussion off the record, and is it correct that the Petroleum Products Department covers marketing, refining and supply and distribution? A. Correct.

Q. Is it correct that that grouping of that department has existed since January of this year? **A.** Became operative January the 1st, 1979.

Q. And you are the chief operating officer for the midwest region of that department? **A.** I would call it the vice-president of the department.

Q. Are you the person with principal authority for operation of that department in the midwest region?
A. Yes.

Q. Immediately prior to becoming vice-president of the midwest region for the Petroleum Products Department, what position did you hold? **A.** From December 1, 1972 until the formation of the new department, I was vice-president of the sales department. It was later named the marketing department. Prior to 1972 I was an area vice-president located here in Chicago from June 1, '71 until December 1, '72. Prior to that time I was [Fisher, R. 1368] with Paragon Oil from June the 1st, 1964 until June 1, 1971.

* * *

Q. To whom did you report as vice-president of the **[Fisher, R. 1369]** sales department? **A.** Well, I had a

responsibility to the executive management of the corporation. The individual who I reported directly to in 1972 through August 1 of 1976 was James W. Kinnear.

Q. And his position was what?
A. Junior vice-president, and on August 1 of '76 reported to Mr. Annon M. Card, senior vice-president.

Q. And do you know to whom Mr. Kinnear reported, not the person but the title of the position? **A.** Well, the senior vice-presidents have a responsibility both to the president and to the chairman.

Q. As vice-president of the sales department, did you have responsibility for the entire geographic area of the United States? **A.** Yes.

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[Fisher, R. 1372]

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Q. As vice-president of the sales department, did you have responsibility for all different kinds of sales of refined products? A. Not all kinds of refined products, it was in the area of motor gasoline, lubricants and middle distillates, not aviation, not petrochemicals.

Q. For purposes of this deposition we are concerned with gasoline, so maybe we can have that understood from this point on. A. Right.

Q. With that qualification, did your responsibilities include all kinds of gasoline sales and what I mean by all kinds, would be consumer sales, sales to independent retailers, wholesaler [Fisher, R. 1373] sales, that kind of thing? A. Correct.

Q. And is it also correct that during the period of time that you held that position that you were the person within the Texaco organization who had overall authority for the sales department in the United States? A. I would not use the word authority, I had the responsibility.

Q. Were you the primary operational person in that area? A. Yes.

Q. And Mr. Kinnear had oversight responsibility over that? A. Right.

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[Fisher, R. 1397]

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Q. I want to show you now Exhibit 1. Just lay that there, if you would. To identify this for the record, this is a March 5, 1976 letter from J. W. Kinnear to Gorman C. Smith, Assistant Administrator, Office of Regulatory Programs, Federal Energy Administration. I want

to direct your attention, Mr. Fisher, to the second paragraph of this letter where Mr. Kinnear says, "Over the last several years the volume of gasoline we sell to Texaco distributors has increased at a dramatic rate while the volume sold directly to supplied retailers has [Fisher, R. 1398] suffered an equally dramatic decrease."

And he goes on to give some examples and the like and some figures, and I will represent to you that Mr. Kinnear in his deposition said that in early 1973 he discussed the trends set forth in paragraph two of his letter which I just read to you, with you, in the context of looking at 1973 distributor figures as compared to 1972.

* * *

Q. He wrote this letter in early 1976, and as you'll notice in the second paragraph there he says, "Over the last

several years the volume of gasoline we sell to Texaco distributors has increased at a dramatic rate."

Is it your recollection that that is a true statement? A. That is a true statement. Whether or not you call it all dramatic or not, I mean I forget the [Fisher, R. 1399] percentage of increase in '74 and '75.

Q. But-- A. But it was going like this.

MR. EBEL: The deposition indicates that he made a gesture there.

Q. But that had occurred over the past several years? A. No, not at the rate that it occurred in '74 and '75.

Q. It had occurred in '72 and '73 also, hadn't it? A. Not at that accelerated rate.

Q. But there was an increase? A. Yes, there was an increase. I think that is in that deposition there.

Q. Are you referring to your previous deposition, Mr. Fisher? A. Right.

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[Fisher, R. 1401]

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Q. And is it correct that you talked about increased allocation, does this mean increased-- A. Volume made available to them.

Q. And is it correct that by and large that was increased volume made available to distributors who were reselling through retail service stations? A. Well, during that period of time, we are talking about the FEA at that time, a distributor had a distinct advantage over an independent retailer. It was an FEA-17 number, and he could present that to the FEA to get his volume increased because of road changes, taking on new business. He could take on **[Fisher, R. 1402]** new business, like in our case

if we closed a service station, we couldn't transfer that volume to another service station. He could do that. He did not have the privilege, so he had a distinct advantage, a distributor in the allocation program.

* * *

Q. Exhibit 2, this is at page 57. Exhibit 2 to Mr. Manthei's deposition, the statement by Texaco to the Department of Fnergy says on page 14--it says actually the first word is on page 13. It says, "Thus the personal observations of west coast marketing personnel as confirmed by independent surveys of the Lundberg survey showed that the retail postings at distributor supplied Texaco stations were on the average several cents below the prevailing prices being posted by directly supplied Texaco stations, as well as below the prices of other major brand retail outlets."

Were you able to follow me on that?
A. Yes, sir.
Q. Do you remember that to be true?
A. Yes. Would you agree with me that being able to post a retail price on the average several cents **[Fisher, R. 1403]** below the prevailing price of directly supplied Texaco stations is a competitive advantage? **A.** Well, I have a problem with your phrase competitive advantage. I mean, the independent retailer could--he has a privilege of selling his product at any price he so desires. Evidently he chose not to meet that price at this other location.
Q. Whether he did or didn't, isn't it a fact that if you price at one--if station A prices several cents below station B, that station A is going to have a competitive advantage? **A.** To increase the volume.

Q. Price is important in this business, isn't it? **A.** Absolutely.
Q. In fact, it is the most important thing, isn't it? **A.** Not necessarily so, I wouldn't say it is the most important thing. If the prices continue to rise, it's going to become extremely important.
Q. As a marketing person, didn't you operate on the assumption that price, that although there might be other elements that would influence a buyer's decision, price-- **A.** Right, extremely important.
Q. And didn't you also operate on the theory that **[Fisher, R. 1404]** it was, of all the various factors, it was the most important? **A.** No, I am not going to say the most.

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[Fisher, R. 1405] * * * Q. Is it correct that when you gave this

deposition, which was in August of '77, that it was your belief that the increase in the volume of distributors was in part at the expense of investment service stations' throughput? **A.** I would say not. It was at the expense of all other retail class of trade as well as investment, other independent retailers.

Q. All other retailers would include directly supplied retailers? **A.** Right.

Q. Like the kind who are the plaintiffs in this case? **A.** Well, I don't know anything about the plaintiffs.

Q. All other retailers covers it, I think? **A.** Yes, sure.

Q. You said earlier that you didn't have any guidelines or policies that you issued with respect to whether a distributor who began selling gasoline to the public through service stations would or would not still be entitled to

the distributor discount. Would it be correct also that you didn't have any guideline or policy with respect to where distributors--excuse me, whether or not which **[Fisher, R. 1406]** distributors were going to locate new stations?

* * *

Q. Would it be correct also that you didn't have any guideline or policy with respect to whether distributors were going to locate new stations? **A.** I don't recall of any written guidelines. There was no policy. But being a distributor myself, I think it would be prudent on my part to discuss this with my supply company as to whether or not this would interfere with the location that they had, say, a continued retailer.

During the time that you speak of here, and this is the area of '74, '75, I think many wholesalers went out, just established retail outlets to gain that

volume which they could get the FEA to approve their 17, and sell more product and consequently can prove their loan profitability.

Q. There were no guidelines or policies then on **[Fisher, R. 1407]** that subject?

A. No.

Q. Not as far as you were concerned?

A. Not as far as I was concerned.

Q. And you are familiar with the term dual distribution? A. Yes.

Q. And in the exhibit, Mr. Kinnear's letter which we referred to earlier on page two, he says in the second to last sentence of the first full paragraph, "As a result, there was considerable intraband competition in Texaco gasoline." Do you see that sentence?

A. Yes.

Q. And did you find that to be a true statement while you were a vice-president of sales? A. I felt that

there would be competition all over the country if they are located in close proximity of each other, or whether it be a distributor out of that or whether it would be another Texaco directly supplied retail outlet.

Q. At page 1 at the very bottom of this letter, after observing the dramatic increase in the volume sold to Texaco distributors, and the new decreased, equally dramatic decrease to directly supplied **[Fisher, R. 1408]** retailers, Mr. Kinnear says, "These trends create a severe problem for us and Texaco retailers. The economic viability of many thousands of independent retailers has been severely strained by this decrease in their gasoline sales."

Were you in agreement with that statement as of the date this letter was written? A. Yes, in principle.

Q. One of the reasons there was a severe problem for Texaco retailers was the fact that the distributors could buy at a lower price, wasn't that correct? A. I would not agree with that statement.

Q. You would not agree with that statement in any respect? A. Well, they purchase at a lower price, but this would not really creating any problem that we are addressing ourselves here to.

Q. The question is whether that was a problem in any respect as far as the viability of directly supplied retailers was concerned. A. It was the volume. See, our Texaco independent retailer was not getting the increased allocation like a distributor was getting.

Q. And wasn't it correct that one of the reasons [Fisher, R. 1409] that the distributor would be able to open a new station and have a basis for getting a

new allocation was because he would be able to buy at a low price? A. He saw the opportunity at that time, in my opinion, to make additional profits, because margins were high at that time. And would--and what would you do if you were in his place?

Q. You didn't see a trend of directly supplied retailers going out and buying new stations, did you? A. No, because they couldn't get a new allocation. They couldn't get a new station approved.

Q. You didn't see, for example, Joe Smith who was a directly supplied retailer on-- A. 22nd and Argonne.

Q. --going out and opening a new location like distributors did?

A. That's correct.

Q. And the distributors did that?

A. Yes.

Q. And then-- A. That is because of the allocation program.

Q. And isn't it correct that you believe that one of the reasons they were able to do that; that is, open new stations, was because they were able to buy [Fisher, R. 1410] at a favorable price? A. Well, they had a favorable price to start with, and this allowed him the privilege to improve his profitability by increasing his volume.

Q. Mr. Kinnear says at page 3 of his letter, the first two sentences of the second paragraph, "We believe that the dramatic shift in gasoline sales from the independent retailer classes of purchaser to the independent distributor classes of purchaser can be explained almost entirely by the magnitude of the distributor discount and the hauling allowance. We believe that they are inconsistent with the realities of gasoline marketing today."

Did you share that belief at the time of this letter, March of 1976? A. Well, I think there is other factors. I did not read this letter before I went to Gorman Smith. I don't recall reading it at all.

Q. As of the time--at or about this time, March of '76, did you share the opinion that the dramatic shift in gasoline sales from the independent retailer classes of purchaser to the independent distributor classes of purchaser could be explained almost entirely by the magnitude of the distributor discount and the hauling allowance? [Fisher, R. 1411] A. Yes, a great portion of it.

Q. And isn't that really the same thing that you meant when you testified in the other deposition as we saw earlier, that the increase in the distributor volume

was partly at the expense of the directly supplied retailers? **A.** Yes.

Q. In late 1973, did you propose changing from the distributor discount to the distributor tank wagon? **A.** Sure I did, because I felt very strongly about that for many years before I even left the department to go to Paragon in '64, that we should have distributor tank wagon price instead of basing it off of the retail tank wagon price.

Q. And I go to page 76.

Mr. Fisher, at or about the time that Mr. Kinnear wrote his letter about the alarming increase in volume and the like, did you attend a regional managers meeting which discussed that situation? **A.** No, I did not attend it.

Q. Do you know somebody by the name of Castleberry? **A.** Billy Castleberry, certainly. He was the staff assistant to Mr. Dougherty, the general manager.

Q. And he worked in New York? **A.** Oh, yes.

* * *

[Fisher, R. 1413]

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Q. (BY MR. EBEL) I want to show you Exhibit 2, which is a memorandum to the file over Mr. Castleberry's signature dated March 8, 1976, entitled Regional Managers Meeting, March 2 and 3, 1976, Distributor Volume Situation. I want to have you look at that and tell me whether you have seen that before. **A.** I have seen it.

Q. Did you see it at or about the time it was written? **A.** I am sure I saw it right after it was written.

Q. This addresses the overall problem of the distributor volume increase, does it not? **[Fisher, R. 1414]** **A.** Right.

Q. And on the first paragraph, Mr. Castleberry says that, "On March 2nd

and 3rd a regional managers meeting was held with the executive staff to discuss the very serious problem of rampant and alarming increases in distributor gasoline volume."

Was it your view at that time the increases were rampant and alarming? A. Well, you can use other words beside rampant and alarming, they were very concerning to us.

Q. Were those, giving some leeway for personal usage of words, did those fairly describe your reaction? A. Yes, very concerned.

Q. Now, --this letter rather than memorandum discusses a three-phase program that was decided upon, is that correct? A. Yes.

Q. The first--I don't want to have you read through every one of these, but if counsel will permit me, is it correct that phase one is described on paragraph

two involves the mailing of a letter of some kind to the distributors? A. Correct.

Q. And that phase two was a process of getting a [Fisher, R. 1415] new distributor contract-- A. Approved.

Q. And then phase three of the program was a price increase for distributors, wasn't it? A. It was the last resort.

Q. Phase one was basically voluntary counseling, wasn't it? A. Yes.

Q. And phase two was-- A. They were all--

Q. --contractual? A. At that time they were very much concerned about supply, and this--we gave the best contract in the industry at that time, a five-year supply contract. Most other companies gave three.

Q. And you said that phase three was the price increase? A. Would be the last step.

Q. Was that a last resort; that is, if the other two didn't prove effective? A. Right.

Q. And did you have to go to that last resort? A. Yes. As you know, we raised the price in PAD V.

Q. Would it be your judgment then that it was the judgment of Texaco--or let's correct that. Was it **[Fisher, R. 1416]** then at that time the judgment of Texaco that the root cause of this problem was the distributor price? A. Well, I wouldn't say the word Texaco, of the sales, of the sales marketing, you know, management people, yes, that's what it came down to, right.

Q. In January of 1977, in the petroleum allocation district No. 5, Texaco raised prices? A. Yes, sir.

Q. That is at the top of page 81. A. Right.

Q. How much was the distributor tank wagon price increased? A. In PAD V in January of '77?

Q. Yes, sir. A. One cent a gallon.

Q. Was there an increase in the retail tank wagon at that point? A. No, there was not.

Q. Was the effect of that then to narrow the then existing margin or differential between the retail tank wagon price and the distributor tank wagon price? A. Not the way you described it. It was to slow down our sales primarily in PAD V. We wrestled with the decision the last three months of 1976. I made **[Fisher, R. 1417]** the decision to wait until we see the year end figures. Then after we saw year end figures we saw no choice but no raise the distributor price. And after examining the Lundberg surveys and surveys furnished by others also, that

that particular class of trade could take an increase because they were selling below distributor, retail outlets were selling below, anywhere from three to four cents of Texaco branded outlets as well as major brand competition. This was not an easy decision to make and I therefore made it and recommended it to management.

Q. And management approved it? **A.** Yes.

Q. Gave its approval? **A.** Yes.

Q. For the reasons you just stated? **A.** Well, we also lost our processing agreement with Exxon in Benicia, January 1, 1976. We didn't have gasoline, we didn't have the amount of gasoline available that we were going to sell, so that was part of the decision, supply-demand. And if the thing--if the curve just kept going on we would have to buy gasoline on the outside which would be uneconomical. We couldn't get

a return on that [Fisher, R. 1418] price. It would have to pay for gasoline.

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[ROBERT JOHN VOGELMAN, R. 1422]

* * *

Q. (BY MR. WHALEY) Mr. Vogelman, were you employed by Texaco during the period from 1970 to 1981? **A.** Yes, sir.

Q. And would you tell the jury what your duties were during the period for Texaco? **A.** I was a Texaco sales supervisor in the area for Spokane, and I supervised the retailing operation and part of the wholesale operation in the district.

* * *

[Vogelman, R. 1450] **Q.** All right. Now, looking at paragraph two, it indicates that wholesalers will be encouraged? **A.** Paragraph two?

Q. Yes, sir. "Wholesalers will be encouraged and motivated through the district to select and develop prime sites thereby improving retail representation, volume and profit, instructions which previously have been issued." Do you recall any prior instructions that were issued in the Spokane district with respect to encouraging wholesalers to develop prime retail sites? **A.** I can't recall any specific instructions. We were given counseling and goals and plans by management to develop new business in our consignee areas and in towns and in areas where we didn't have wholesalers or stations, investment type stations.

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[Vogelman, R. 1478]

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Q. When you reviewed these volumes that had been sold from 1970 to 1975, did you

notice any trend, any change in this marketing balance that you had been trying to maintain? **A.** Yes, I saw a change in it.

Q. And what did you see? **A.** I saw that the volumes to the distributors and the volumes to the retailers and the volumes through the tank truck dealer changing in their proportion.

Q. And who was growing? **A.** The distributor was increasing some in volume but our throughput was increasing also. It wasn't decreasing.

Q. Your letter here reflects that there was a large growth in volume to the distributors in 1972? **A.** Yes.

Q. And that would have been the John Dompier Oil Company? **A.** Yes, it would have.

Q. And this would have been in the same period of **[Vogelman, R. 1479]** time that the instructions had come out to

encourage wholesalers to develop retail sites? **A.** Yes, I said that before.

Q. Then did you notice any change in the type of stations that Mr. Dompier was supplying in 1972? **A.** I think that some of the units that he was supplying were gravitating toward self service, or at least the customer would fill up his own gas tank; there was no--the lube bay, I don't know that he had any of those. There may have been one, but I can't recall.

Q. So did you notice in the period 1972, 1973 that these stations were selling gasoline based upon price mostly? **A.** That type of retailing was based quite a bit on price, yes.

Q. And was within the Texaco brand? **A.** Dompier stations were branded Texaco.

Q. And during the same period of time you were encouraging the plaintiff stations to draw in their business by

giving better service, is that correct? **A.** Well, that was one of the parts of our function, was to get the retailers to give as good a service as possible, yes.

Q. Did you ever make a recommendation that the **[Vogelman, R. 1480]** retail accounts which were in 1972, have a lower buying price in order that they could post prices like you were observing at the stations supplied by the John Dompier Oil Company? **A.** I am not sure I understand that. Could you repeat it?

Q. You noticed stations in 1972 of the Texaco brand that were selling gas based upon what we call price retailing, is that correct? **A.** Yes.

Q. And at the same time you were encouraging the plaintiff stations to draw in people based upon giving service, is that correct? **A.** That was

one of the ways we were getting or helping our retailers to increase business, yes.

Q. And you had a specific program whereby you encouraged them to do that? **A.** Yes.

Q. Did you ever consider, in order to assist them in drawing in people or make a recommendation that their buying price be lowered so they could compete with these stations that were posting lower prices? **A.** You are saying did we ever try to get the retail tank wagon changed? **Q.** Did you ever try to decrease their buying price? **[Vogelman, R. 1481]** **A.** No.

Q. All right. Now, it says in this paragraph through close rapport with the distributor you managed to counsel Dompier to not aggressively supply and solicit new accounts in Spokane, especially those in close proximity to

third-party accounts. What is a third-party account? **A.** That is the one that I was saying gives us throughput, or one of them. He is a Texaco wholly-owned station.

Q. Why were you counseling him not to build stations in the proximity of these throughput accounts? **A.** Well, I was of the opinion that the distributor is in business in the area, number one, to make a profit; number two, to fill a need where there isn't any service station, where there isn't any--someplace where there is a need for his station. That is why it should be there, and it was our opinion that it was only good business not to have, from his standpoint especially, not to build a station right across the street from our station. I am talking about an investment type.

Q. You were concerned that if his station was too close to one of your stations he might draw business [Vogelman, R. 1482] away? A. I think it was a concern, but I just didn't think it was good business to do that, it didn't make sense in my mind.

Q. It didn't make sense for Texaco either, did it? A. I don't recall. Well, yes, it wouldn't make sense for Texaco, no.

Q. Your purpose-- A. Of course not.

Q. Your purpose in counseling not to build stations in close proximity to yours was to protect Texaco's investment, was it not? A. I think that is one of the reasons, but I think it is also from the Dompier's standpoint to protect his investment. Why should he do that?

Q. Apparently you had to consult him not to do that in this period of time,

is that correct? A. Well, according to my letter and as I recall, I think one or two or three questionable, I don't remember now, units that I was concerned about.

Q. Being too close to yours? A. The Big West thing, yes.

Q. Were you concerned about his units being too close to your investment accounts? A. I think that was one of the considerations. I [Vogelman, R. 1483] think primarily as I try to recall, I was concerned about the image more than anything else, but I do know that was one of the considerations.

Q. Is one of the reasons you wouldn't want one of his stations too close to yours the investment account because he would draw business away from that account? A. Well, yes, of course, it could go either way, but yes.

Q. And your station might draw business from his accounts? A. Yes, it is possible. You never know.

Q. Did you consider the stations that he was supplying in Spokane to be in competition with your throughput stations? A. Yes.

Q. Even though your throughput stations were giving service, you considered his stations where they either had mini-serve or self-serve to be in competition, is that correct? A. Yes, I considered--well, of course, Dompier was operating that company, was operating in the Spokane market. They were in competition with certain stations. They were in competition with everybody in town, very definitely.

[Vogelman, R. 1484] Q. And this competition would be especially important in the Texaco brand, is that correct? A. Yes.

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[RICKY AL HASBROUCK, R. 1542]

* * *

Q. Mr. Hasbrouck, give us your home address. A. North 6521 Washington.

Q. That is on the north side of town about how many blocks from the central business district? A. From the main--

Q. From the central district? A. About 65 blocks, I guess.

Q. Okay. Can you tell me, where was your service station located here in Spokane? A. On 4302 North Driscoll.

Q. Can you take the pointer that is there behind that map and show the jury the location of your station? A. (Indicating.)

Q. You will have to speak a little louder. What were the years of operation of your service station here in town? A. From June of 1971 through, I believe it is, the 1st of September '75.

* * *

[Hasbrouck, R. 1543] **Q.** Can you tell the jury how you got in the service station business? **A.** I had a brother-in-law, we was looking for a unit and I lived in Great Falls, Montana. I had a brother-in-law over here and we was talking one day to him and he told me there were several units over here for lease. So my wife and I drove over here. We looked around and we found one on Driscoll Boulevard that we liked.

Q. Did you talk to anyone from Texaco when you came to Spokane in 1971? **A.** We talked with Pat Riley, which was the Texaco representative at that time.

Q. Was that before you leased the station from Texaco? **A.** Right.

Q. What did Mr. Riley do with you at that time, if you know? **A.** Oh, he kind of interviewed me and told me about the unit.

Q. I am sorry, I couldn't hear you. He what? **A.** He interviewed me, gave me an interview and we talked about the unit, and said that the prior owner was willing to sell out.

Q. Where were you working at this time? **[Hasbrouck, R. 1544]** **A.** I was working at Great Falls, Montana, at a Conoco station.

Q. And can you tell the jury what your background is in mechanical work? **A.** I was in the Air Force for four years as an aircraft mechanic. Once I got out of that, I moved to Great Falls, Montana, and I worked for with Bob's Conoco for two years as a mechanic.

* * *

[Hasbrouck, R. 1546] * * * **Q.** When you settled on that location on Driscoll and C, can you describe for the jury what you considered to be your traffic patterns in that area? **A.** Our traffic

pattern, we had the Veterans Hospital, Albi Stadium, refuse department, Five Mile and Nine Mile area was a traffic pattern. We had a shopping center within about six blocks, Shadle Shopping Center. That was about it.

Q. Then after you had been in the service station for some time, did you have occasion to deal with your Texaco representatives again, say, just in the first year there, 1971? Did the Texaco rep come to your service station on occasion? **A.** They averaged once about every week and a half, two weeks, they would stop by.

Q. During that time did you have occasion to meet other Texaco dealers in Spokane? **A.** Yes.

Q. And could you tell the jury how that would happen? **A.** One afternoon Pat Riley, my representative for Texaco, came and picked me up. We drove

around. He showed me the retail places of Texaco's. We stopped and talked to a couple of dealers that afternoon.

[Hasbrouck, R. 1547] Q. Do you know if you ever were taken into the station supplied by John Dompier Oil Company at that time by Mr. Riley? **A.** I never was, no.

Q. Were you aware at the time you leased the station that there were distributor supplied stations in Spokane under the same Texaco brand? **A.** No.

Q. Could you describe for the jury, you have shown them the picture, could you describe for them the kind of service station it was? By that I mean the physical appearance of it? **A.** My unit?

Q. Yes. **A.** If was a two bay unit, had two hoists, had two double pumps on the same island, had an office. It was a brick building. It was on a three

corner lot on Driscoll Boulevard, which is a well traveled arterial.

Q. Was this in a neighborhood? A. It was in a residential area.

* * *

[Hasbrouck, R. 1550]

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Q. (BY MRS. WHALEY) About how many of your customers do you believe were trading on the Texaco credit card, about how many of your customers? A. 65, 75 percent.

Q. Was the Texaco brand identification important to you in your business? A. Very important.

Q. Why was that? A. Because it was well advertised on television, it [Hasbrouck, R. 1551] was introduced to the people and they knew what the Texaco star meant.

* * *

[Hasbrouck, R. 1552] Q. What type of equipment did you own in the service station, you yourself individually? A. I owned all my tune-up equipment, tire machine, jacks, the balance system, safe, the register, air hoses, all my hand tools.

Q. Can you tell us what was your purchase price from Texaco, what was it called? A. I believe it was $3,700.

Q. No, by that I mean what was the purchase price you were buying gasoline for from Texaco? A. Retail tank wagon.

Q. And then you could tell us generally, if you would describe for the jury, what you considered to be your competitive area in the sale of gasoline in Spokane? A. Well, I thought the whole City of Spokane was.

Q. Did you get to know your customers over the years? A. Quite a few of them, yes.

Q. Can you tell the jury generally where those customers came from, in your opinion? **A.** We have a lot of them from the Air Force base, from the south hill, from the Valley, a lot of them from community college came by.

Q. You mentioned that at the time you got into the **[Hasbrouck, R. 1553]** service station, you weren't aware of the distributor supplied stations here in town marketing under the Texaco brand. Can you tell the jury when it was that you did become aware that there were service stations supplied by the Texaco distributor here? **A.** I would say probably three, four months after I was in business.

Q. And how did that happen? **A.** I was going after parts one day down Monroe Street and I seen a Dompier Texaco truck dumping gas at the Monroe Street Texaco.

Q. When you say you were going after parts, do you mean parts for the business? **A.** Right.

Q. Did you observe any other Texaco stations in Spokane that were supplied by the distributor? **A.** Well, in our--when we were traveling around, right, we would see the Dompier truck at different units.

Q. Did you yourself over the years ever do what's been described as a competitive price survey of the Spokane market while you were in the business? **A.** I don't--

Q. Did you yourself over the years while you were a **[Hasbrouck, R. 1554]** Texaco dealer survey the market for retail prices? **A.** Yes. The first year or two we was in business my wife and I would drive around almost every night in different areas checking prices.

Q. And can you tell us where you looked at the time you were checking prices in those first years? A. The whole City of Spokane and the Valley.

Q. Did you observe any lower retail prices at the Texaco stations, other Texaco stations in Spokane? A. Yes.

Q. Can you identify those for me? A. The one in Hillyard on Market. There was one on Third Avenue, Monroe Street, one on Division.

Q. Would you take the pointer that you just had up there, Mr. Hasbrouck, and point to the locations of the stations that you just identified? A. The one on Monroe, the one on Market, the one on Third Avenue, and the one on North Division.

Q. During this period of time that you have been describing or actually all--I will rephrase the question to include the entire time that you were a Texaco

dealer, which I think you said was '71 to '75, did you observe the amount of the difference between those stations you have identified posting retail prices versus your own? [Hasbrouck, R. 1555] A. Between three to four cents a gallon.

Q. Did you have any conversations with your Texaco rep regarding those stations over the years? You can answer that just for the moment yes or no. A. Yes.

Q. And can you tell me who that was? A. Pat Riley was the first one.

Q. And anyone else? A. Andy Evans was my second representative.

Q. Can you tell me generally what you told Mr. Riley? A. Riley just said that he had no control over those units.

Q. What did you tell Mr. Evans? A. I talked to Andy Evans about the price variation, and it came down to a heated argument, which was, he virtually said

it was none of my business what those units did.

Q. Over this same period of time that you were surveying retail prices in Spokane, did you observe in any way any Gull stations in the market as well?

A. The two that I really noticed was up on Francis by Fred Meyer.

Q. Could you use the same pointer again and show the jury the two stations that you are describing? [Hasbrouck, R. 1556] A. The two units right here.

Q. Did you know Texaco was supplying Gull Oil Company in Spokane at that time? A. No, I didn't.

Q. Did you notice any of your customers in those Gull stations? A. No, I don't think so.

Q. Did you notice any of your customers in the distributor station on North Monroe, the Texaco station? A. Yes, Mrs. Ferguson.

Q. She was a customer of yours?

A. Yes, right. Mrs.--

Q. Any other customers? A. Mrs. Courman (phonetic), my next door neighbor.

Q. Did Mrs. Keller also trade with you? A. Correct.

Q. Any other customers? A. Mrs. Grace.

Q. Was she related to one of your employees? A. Yes, mother of one of my part-time help.

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[Hasbrouck, R. 1557]

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Q. Okay. During this same period of time did you attend any meetings sponsored by Texaco for Texaco dealers here in town? A. Yes, I did.

Q. And where were those? A. They were at the Ramada Inn at the airport, or one or two of them was downtown at the Holiday Inn.

Q. Who would run those meetings for Texaco, Incorporated? A. The employees of the Texaco bulk plant, I believe that is who worked them.

Q. Would it have been Mr. Evans or Mr. Riley? A. Right.

Q. Would Mr. Vogelman have run those meetings. A. Mr. Vogelman was there.

[Hasbrouck, R. 1558] Q. Okay. Can you tell me generally the types of topics that were discussed. A. Mainly just merchandise that they would have on sale, tires, antifreeze, if it was the right time of year, specials on oil, special on their polish and their waxes.

Q. Would it be fair to say that part of this was characterized as promotions for Texaco products other than gasoline? A. Correct.

Q. Now, during the years that you were a Texaco dealer here in town, can you tell us approximately what your margin

was? By that I mean the difference between your wholesale price and your retail price? A. We started out at four cents, then we went to seven. We tried to maintain a seven cent margin.

Q. Did it ever go higher than seven cents? A. Yes.

Q. Can you tell the jury the kind of circumstances that would warrant you to raise your margin? A. Well, we would have a poor month, then things weren't going real well. We needed a little extra money. We would raise up the gas by a little, depends on how much we needed.

Q. Can you tell the jury how you attempted to **[Hasbrouck, R. 1559]** compete over the years in this gas station, and by that I am talking about specials or lowering your price, that sort of thing? What did you do as a dealer? A. We always carried our price

signs on it, and we always made a survey and stayed as competitive as possible. At one time we even lost money doing it.

Q. Did you ever during those years attempt to meet the price of the station on North Monroe? A. I did one evening.

Q. Can you tell me when that was? A. That was in '72, I believe, in August of '72.

Q. Okay. And what did you do? A. One of my help wanted to pick up parts again down on Monroe Street, and when he came back he told me the Monroe Street Texaco was four cents less than I was. So I told the guys to hang onto their hat, that we was going to lower our price and we was going to sell gas.

Q. What did you do at that time? A. We lowered our price five cents a gallon.

Q. Where would this have been, in the middle of the day? A. That would have

been about 5:00 in the afternoon we did it.

[Hasbrouck, R. 1560] Q. What happened when you lowered your price five cents a gallon? A. We sold some gas and we lost some money.

Q. Can you describe for us what was happening at your station that evening? A. Well, we just--normally we get everybody coming home, we had people lined out in the streets to buy gas.

Q. Did you raise the price after that, or did it stay down? A. At 9:00 I raised the price back up.

Q. Okay. What was the reason you raised the price back up? A. We were just losing too much money. We was losing over a cent a gallon because I had employees that had to go home, and if I hadn't raised the price we would have been there all night.

Q. Did you ever talk to Texaco about remodeling your station to go into the self service, which has been discussed in this case? A. Yes, I have.

Q. Whom did you talk to? A. Andy Evans.

Q. And what were you told by Mr. Evans? A. That it would be almost physically impossible to [Hasbrouck, R. 1561] do it, that they would have to put another set of pumps in and more storage tanks, and couldn't justify the cost.

Q. With your buying price from Texaco at retail tank wagon, was there any way that you could have, if you had gone self service, competed with the North Monroe or the Freya or the Third Avenue stations operated by the Texaco distributor? A. I couldn't still meet their prices, no.

Q. Did you notice over those years, '71 to '75, a decline in your gas volume?
A. Definitely.

Q. When your sales declined in the mid-1970's, what kind of an effect did it have on your back room business that you described? A. Well, our dollar per thousand gallons dropped off. We started laying off employees for lack of work.

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[ANDY EVANS, R. 1621]

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Q. Would you state your name? A. Andy Evans.

Q. Where do you reside, Mr. Evans?
A. I reside here in Spokane.

Q. Were you served with a subpoena to appear in court today? A. Yes, I was.

Q. And what's your occupation at the present time? A. Presently I am

employed at Boyle Fuel Company in Spokane as a sales representative.

Q. Were you ever employed by the Texaco Company? **A.** From January of 1971 to the end of October 1975.

Q. And what were your duties with the Texaco Company? **A.** I was a sales representative.

Q. Did you ever work for Texaco prior to 1971? **A.** Yes, I had. I spent two summers during my college years working in the bulk plant in Spokane as a warehouseman.

Q. And what is your educational background in college, for instance? **A.** I graduated with a degree in political science **[Evans, R. 1622]** from Pacific Lutheran University in Tacoma, Washington.

Q. Will you tell the jury what the duties were of a sales representative in Spokane during the period of time that

you worked for Texaco? **A.** In general terms it was my duty and responsibility to act as the intermediary between the dealer and the company, and as such I functioned as a sales representative responsible for financial help of the service stations I was assigned. That included such things as competitive counseling, business analysis, merchandising and also sales.

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[Evans, R. 1625]

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Q. And who was your supervisor during this period? **[Evans, R. 1626]** **A.** Bob Vogelman.

Q. During the period of time that you were the Texaco representative, did you observe the competitive market in the stations at which the dealers you were counseling were in competition with? **A.** Yes. I was in very close contact

with the market situation just on the basis of the surveys we took to request repetitive price allowances. Price assistance is what we called it.

Q. In 1972, Mr. Evans, you were the Texaco dealer representative for the dealers you previously identified, is that correct? **A.** That's correct.

Q. And in that connection did you make any observations as to what was the chief competition that they were facing? **A.** The unbranded independents. And I felt competition within their own organization oftentimes was the key to their marketing strategy.

Q. What was the competition within their own organization? **A.** A distributor, what we called distributor accounts that were oftentimes in very close proximity with the same trademark as our own leased and open contract retailers, that on the basis of price

were **[Evans, R. 1627]** more competitive than our own direct supplied dealers.

Q. And what was the name of the distributors that supplied those stations you previously referred to?

A. John Dompier Oil Company.

Q. Did you make any observations in 1972 about the price posted at those stations compared to the price posted at the stations that you were counseling?

A. Generally they were two cents less than the prices posted by my dealers.

Q. Mr. Evans, during the period of time that you were the Texaco representative here in Spokane, were you aware that the stations that were being supplied by John Dompier Oil Company were receiving discounts from the John Dompier Oil Company in the purchase of gasoline?

A. I had been told.

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[Evans, R. 1632]

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Q. (BY MR. EBEL) Mr. Evans, did you ever receive any complaints from the dealers that you counseled concerning the retail pricing at the stations supplied by the John Dompier Oil Company stations? A. This was one of the more popular topics of conversation between myself and my dealers.

Q. It occurred frequently? A. Quite often.

Q. Did you relate those complaints to anyone in the Texaco organization? A. I, of course, asked my supervisor why this type of situation was existing and why it was occurring, and he said that he tried to do something about it.

Q. Who was your supervisor? A. Bob Vogelman.

Q. Did he tell you what he tried to do about it? A. He mentioned on numerous

occasions that he had [Evans, R. 1633] talked to John Dompier.

Q. Did you ever see any meetings between Vogelman and John Dompier? A. I did.

Q. Where? A. Too numerous occasions to count. They had a great deal of closed door-type meetings within the district office.

Q. Did you ever hear Mr. Vogelman or any of your superiors, Mr. Bollinger or Mr. Kerry, make an observation about the method of marketing in Spokane through the distributor as well as for the retail class of trade? A. Yes.

Q. And what period of time would you have heard that observation made? A. It was sometime during the period of the latter part of 1974 and the spring of '75 when gasoline supplies were becoming plentiful again. In other

words, there was an increased competition in the marketplace.

Q. Mr. Evans, in that period of time, in late 1973, late '74 or '75, would you tell the Court and jury who within the Texaco organization these observations were made by, the name? [Evans, R. 1634] A. Bob Vogelman.

Q. And that was in a conversation with you? A. At the district office.

Q. And was there anybody else present at any of these conversations? A. Ralph Bowman and Mike Edmonds.

Q. Were they also Texaco employees? A. Yes, they were.

Q. And I would ask you now, what were the observations made about the marketing of Texaco products in Spokane by distributors and by retailers? A. They observed that at the time it was like a two-headed snake, sooner or later Texaco was going to have to make a

decision as to which method of marketing they wanted to pursue here in the City of Spokane.

Q. They were in conflict? A. They were in conflict.

Q. During the period of time 1972 to 1973, did Texaco institute any programs to attempt to make their dealers competitive? A. Not as concerns the price.

Q. They didn't do anything about the price? A. Texaco traditionally has the highest tank wagon in town, but they didn't offer any incentive as far [Evans, R. 1635] as price.

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[Evans, R. 1654]

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Q. Were you as sales representative at this time for Texaco, did you then feel it was important in your attempt to stay personally informed to see what the

other major companies were doing in this area? A. That's correct.

Q. Companies like Standard Oil of California that marketed Chevron products?

You nodded your head affirmatively.

Is that right? You have to answer out loud.

A. Yes, I did.

Q. Union oil company? [Evans, R. 1655] A. Yes.

Q. Exxon? A. Yes.

Q. Phillips? A. Yes.

Q. While Conoco was still here, Conoco? A. That is also true.

Q. Husky? A. Yes.

Q. As well as these independents that you alluded to a minute ago, is that correct? A. That's correct?

Q. Because they were all competitors of your stations, weren't they, Mr. Evans?

A. They were all within the marketing area.

Q. And they all represented competition to your stations that you were concerned with as the area representative, isn't that-- A. That's correct.

Q. Let's talk a second now about the independent branded retailers that you alluded to. Would they be stations like Vista? A. Yes.

Q. Fas Gas? A. Yes.

[Evans, R. 1656]

Q. Fill-em' Fast? A. Yes.

Q. Jackpot? A. Yes.

Q. Husky, or maybe that is a branded station? A. Husky was treated as an independent.

Q. Hancock? A. Hancock. Hancock was treated as an independent.

Q. Gasamat? A. Also an independent.

Q. Were all these stations that I just referred to competitive stations from a

price standpoint; in other words, were they selling gas on a self service basis and advertising prices competitively? **A.** The greater percentage of all those marketers you mentioned were advertising prices on a competitive basis.

Q. That's the last group that I just referred to? **A.** Yes.

Q. Did you observe in the years 1972 up until the time you left any kind of a trend in the Spokane market? And to be a little more specific about that, Mr. Evans, did you observe a trend that you might say was an increasing influence of these independent branded stations in the market over that span of **[Evans, R. 1657]** three or four years? **A.** I observed due to a fluctuating supply situation that people changed their buying habits from traditional full service major branded oil companies to places where they could simply get

gasoline. And some of the residual thinking in that area still exists today.

Q. Well, is the answer to my question then, yes, that you observed the trend, at least of the consumers, the motoring public to favor that type of station as time went on, the self service gas station that advertised lower prices in that group that we were just talking about? **A.** Yes.

Q. Was that trend that you and I have identified now of concern to you as a representative of these 11 Texaco retailers? **A.** Of course it was.

Q. Is it fair for me to assume that that trend and the increased influence that that phase of the market had, which you and I just identified, had an adverse competitive effect on stations that were full service, such as your 11 stations? By that I mean, they lost business to that newer type of gas

station, is that fair? [Evans, R. 1658] A. Certain stations were affected more severely than others.

Q. I understand that is true and I will talk about that in a moment, but as a general proposition, is my statement accurate? A. It is.

Q. Well, you mentioned talking about individual stations, and I think you said some individual stations would be more affected than others. Is that a fair paraphrase of your statement? A. (Witness nods head affirmatively.)

Q. He nodded his head affirmatively. You have to answer yes so that Dave can hear you. A. Yes.

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[KEITH LEFFLER, R. 1705]

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Q. (BY MR. WHALEY) Dr. Leffler, what were you asked to do in this case? A. I was asked to analyze the pricing

at both the [Leffler, R. 1706] wholesale and the retail level in the Spokane marketplace, basically in the Seventies, and determine from that analysis whether there was economic issues that I could be of assistance in analyzing with respect to this case and with respect to the pricing in the Robinson-Patman Act.

Q. Were there any questions that you felt you had to answer sort of in order, one at a time, in order to analyze these issues? A. Yes. I felt that the way to proceed in my study of that was to sort of step-wise reach some conclusions. The first issue that I felt needed to be addressed was the--whether or not in fact different prices were being charged to different purchasers and/or the customers of those purchasers, in particular, of course, the Dompier Oil Company and the plaintiffs in this case.

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[Leffler, R. 1708]

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Q. What were the steps that you followed in analyzing the first question, or what did you do to analyze the first question concerning whether or not there were different prices being charged? A. Well, it probably appears to be a trivial question, look at the prices. But, in fact, from my prior work in the industry, I was aware that there are lots of things we might call allowances or discounts that can occur with respect to sort of the nominal or the list prices, if you prefer, that are being charged. So, first of all, I had to gain information on all the various discounts that were being charged, and then determine whether those discounts represented subtractions from the actual price of gas that someone paid, such things as [Leffler, R. 1709] competitive

allowances and discounts from tank wagon and what not.

Then in addition to that, I had to determine what price was being charged by the John Dompier Oil Company to his purchasers during periods where those were the relevant prices. So I had to look at that sort of thing and come up ultimately with a true buying price, net of all appropriate discounts, for the plaintiffs and for John Dompier Oil Company and for Gull Oil Company and for the stations supplied by John Dompier Oil Company.

Q. Why would you be looking at the prices charged to the customers of the John Dompier Oil Company? For the record, in this case we have been identified basically as stations that were supplied in Spokane. A. Two reasons, really. One reason is that ultimately I was going to be interested

in the impact in the marketplace of any price differences, and the impact in the marketplace was occurring at the level where you and I buy gas, at the customer level, so I wanted to ultimately see how it was impacting the customer level.

And, secondly, the Robinson-Patman Act specifically states that it concerns price differences between purchasers and their customers **[Leffler, R. 1710]** and/or their customers, if it's relevant. So for both those reasons.

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[Leffler, R. 1711]

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Q. And did you reach any conclusions after doing that as to whether or not there was a difference in price, either to the plaintiffs and the Dompier Oil Company and the Gull Oil Company or their customers? **A.** Yes, I did.

Q. And what was that conclusion? **A.** I concluded that the Dompier Oil Company paid a lower price for gasoline throughout the period I looked at, which is basically February 1972 through February 1981; that the Gull Oil Company paid a lower price for product throughout that period; that the **[Leffler, R. 1712]** Dompier supplied stations paid a lower price for much of the period, though there was periods where the supplied stations' price was as high as, or on occasion, greater than what the plaintiffs paid for brief periods.

Q. In analyzing this issue, did you take into account those period when the supplied stations were paying equal to or greater than the plaintiffs? **A.** Yes, I certainly did take that into account.

Q. So your answer to the first question that you imposed would be yes?

A. That's correct. I concluded that, in fact, different prices were being charged to different buyers.

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Q. (BY MR. WHALEY) Would you tell the jury what the second question was that you felt needed to be analyzed in order to complete this task? [Leffler, R. 1713] A. Yes. I was sort of approaching it so if I answered no to the first question, there was no need to go on. There was nothing for me to address any longer. But in fact, I found that different prices were being charged, there were other things to pursue. And the second thing I felt relevant was to determine whether or not the plaintiffs and the Dompier stations on supplied stations competed with one another, since if they did not compete with one another, there could not be an impact on the marketplace. And that's

going to be the ultimate issue I was concerned with.

The second question was to say did the Dompier stations or the Dompier supplied stations compete with the plaintiffs.

Q. Did you also analyze that with respect to the Gull stations? A. Yes, I did, and also did the Gull stations compete with the plaintiffs.

Q. Would you write your second question on the board for the jury? A. (Witness complies.) Again I paraphrased.

Q. Your second question is a paraphrase? A. Yes. Is there competition between the Dompier stations, competition between Dompier stations and [Leffler, R. 1714] the plaintiffs, the supplied stations and the plaintiffs and the Gull stations and the plaintiffs.

Q. What do you mean by competition? A. The sort of general notion of competition simply means that sellers, two sellers in particular are competing for; that is, attempting to get the purchase dollars of consumers. That is they are both trying to win the prize, and the prize is selling the product. So it's completely analogous to the competition in the consumer race; two individuals are trying to get the prize of being first, so trying to compete to get the purchase dollars of consumers.

Q. Would that mean that for every single person, regardless of where they are, they were competing for the dollar, or is it the concept of competing in the same market for the dollar? A. It's certainly not--to say that two sellers compete with one another is certainly not to say that every single customer either one of them might have, stands

ready to shift their allegiance or their purchases at, say very small changes in the offers.

For example, there are people who will only buy a Ford, there are people who will only buy a Chevy, but nonetheless those products compete very intensively because a set of people are willing to [Leffler, R. 1715] consider the offers made by either company in making their decisions.

To an economist there are really degrees of competition. It could be perfect competition which means that everybody is standing ready at 1/10th of a cent price difference to switch their allegiance, or more limited competition where there is a smaller set of the customers who are considering the two offers in making their decisions.

Q. Did you reach any conclusion as to whether or not there was competition

between the stations operated by the plaintiffs and those operated or supplied by the John Dompier Oil Company or Gull Oil Company? **A.** Yes, I did.

Q. What were your conclusions? **A.** I concluded that, in fact, the economic market in which sellers were competing for the purchase dollars was an area that included the Gull stations, the plaintiff stations and the Dompier stations, and that those stations, in addition to other stations in the marketplace, certainly were competing with each other; that this was a marketplace with lots of competition, in particular competition occurring among the stations that I was interested in.

Q. Were the plaintiff stations competing with other **[Leffler, R. 1716]** marketers like Fill-em' Fast, Exxon, that sort of marketer? **A.** Yes, they were.

Q. And were they competing with the stations operated or supplied by the Dompier Oil Company and the Gull stations? **A.** Yes. And even to a greater degree because an important issue in deciding how much competition there will be is how similar do consumers consider the two products. So in the case of the Dompier stations and the plaintiffs, they are selling a product that has a brand identity, a product that Texaco has spent lots of time and effort in advertising dollars on to let us know that their product has some uniqueness to it, and that the product sold by those two sellers is labeled identically and it is, in fact, the same gasoline. It has the Texaco brand on it.

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[Leffler, R. 1717]

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Q. How can there be competition between, say, the Dompier Oil Company and the plaintiffs when the plaintiffs are buying under a retail tank wagon contract and the Dompier Oil Company is buying under a distributor contract?

A. The competition refers to competition for the purchasers. The competition that's occurring is that competition to get the--to sell the gasoline to the people who need gasoline. The label we put on sellers is not relevant to that at all. We can call them whatever we want, but it's the substance that counts and not the form of the label.

So when Dompier is operating stations, he is clearly in direct competition with the plaintiffs. If he is not operating stations, then what I

am concerned with is the competition that exists between the stations he supplies and the plaintiff stations. * * * [Leffler, R. 1718]

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Q. Turning to the evidence that this jury has heard, are there any particular portions of that evidence that are important to you in determining the finding that these stations compete with each other? [Leffler, R. 1719] * * *

A. It's totally compelling in some sense that we have Mr. Vogelman, who I presume probably knows more about the marketing of Texaco in this particular area than anybody else, who states that, of course, there is competition between--

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A. So I said, Mr. Vogelman concluded that there was [Leffler, R. 1720] competition. Mr. Evans said that that competition was crucial. The entire

notion of competition, the most direct observation an economist can have of the presence of competition is a buyer decides to patronize one seller instead of another because the offer is better. And I have heard just a succession of individuals who had that exact reaction in the marketplace, who purchased gasoline from Dompier instead of from plaintiffs because the Dompier offer was better; that is, competition being exhibited in the marketplace, and there were other sorts of things related to that notion.

Q. (BY MR. WHALEY) So the answer to the second question is what? A. I don't know how to make it strong enough. The fact is there was certainly competition between these stations. There is no doubt in my mind of that issue.

Q. What was the third issue you felt you had to analyze after you answered the second question? A. Well, I now have--the prices are different that they are charged. They, in fact, compete for the purchase dollars of the consumers. The third thing I need to analyze is, did the prices they were being charged affect the competition; that is, did what happened at number one somehow translate down into an [Leffler, R. 1721] effect on these particular plaintiffs.

Q. How would you paraphrase that third question for the jury and write it up there? A. I would put it, did the price difference impact or affect the competition between those various buyers?

Q. Did you reach a conclusion based upon the evidence that has come into this case as to whether or not there was an impact on the competition between the

stations that were charged different prices than the plaintiffs during the period of time involved in this lawsuit? **A.** Yes, I did.

Q. What do you mean by impacted competition? **A.** I mean the ability of the plaintiffs to compete in different ways was impacted. I mean, the manner in which they competed was impacted by the fact that they were paying a different price than was another buyer. Perhaps the analogy of the race is appropriate again. If you have someone starting a race half a lap behind, the issue is, do they do things different than they would otherwise. So it's basically that. Is that competition between them impacted? Certainly the very fact they are starting out a lap behind has itself impacted the competition.

[Leffler, R. 1732]

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Q. Having answered the third question, backing up, did you conclude whether or not the competition between the stations or the customers of the stations was impacted by the price difference? **A.** Yes. Again in my mind there is no doubt as to the answer to that question, which is that very fact discussed by the Texaco individuals who were most familiar with the marketplace.

Q. Now, what was the fourth question you had to answer? **A.** The fourth thing I had to address having concluded yes to these three was, were the plaintiffs injured in an economic sense by this; that is, the price differential was affecting the competition between them but was it economically injuring them?

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[Leffler, R. 1733]

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Q. Briefly what injury, what evidence have we heard in this case would support the conclusion that the plaintiffs were injured as a result of the price discrimination? A. We have heard many customers who have testified that because of the lower prices at the Dompier stations, they reduced and, in some cases, ceased their purchases from these plaintiffs. That is exactly cases of economic injury resulting from these other facts.

Q. Was there any indication of that in the testimony that you listened to from Texaco? A. Yes. Again the Texaco witnesses, or at least [Leffler, R. 1734] some of them, and the Texaco documents, the Kinnear letter I referred to earlier, it discussed the problem that's occurring. The problem is the

loss of gallonage by stations like the plaintiffs as independent retailers to these distributor stations, the Castleberry memorandum that discussed the rampant increase in gallonage at the expense of the independent retailers. Again it's the same set of things that I utilized to conclude number three led me to the conclusion to number four, namely yes, they certainly were.

Q. And what was the final question that you had to answer to complete your analysis in this case? A. The fifth and, in fact, final question that I then had to address having answered yes to all these was, could I then quantify; that is, could I estimate or could I determine in dollars and cents what that injury was.

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[Leffler, R. 1736]

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Q. And the efforts you made in answering the fifth question was to quantify that injury? A. Yes, to see if I could quantify in dollar and cents what that injury is.

Q. What did you do to determine--to quantify the injury that you concluded had been suffered? A. Well, we are in a situation of sort of asking the question--the following question: Namely, what would the sales and profits of these plaintiffs had been if there had not been the price discrimination?

So the basic question that I am addressing is trying to determine what the market would have been like if the market was different than the market was. So the first sort of thing I have to address is, what would the buying price have been if there had not been

the price difference. It clearly can't be what it was.

Q. Some price would have to change? A. Yes. It's the race again. Someone is half a lap [Leffler, R. 1737] behind and we are going to analyze how would the competition be and sales and profits be if they would have started together. So someone has to move. Either the person ahead back or the person behind up or something else.

Q. What are, in your judgment, the reasonable alternatives as to how the price discrimination would have been eliminated in Spokane during the period of this lawsuit? A. I think we have some very basic sort of bounds we can look at in analyzing that. We know what Texaco charged the plaintiffs, we know what Texaco charged Dompier, and we know what Texaco charged Gull Company. So that in some sense, we are going to

expect their reaction to be some price within those bounds. So you have a high price and a low price. And obvious possibilities are you eliminate the discrimination in price by, for example, moving Dompier to the plaintiffs' position; that is, raising the buying price to the Dompier company, alternatively eliminating the price difference by moving the plaintiffs to the Dompier position; that is, lowering the buying price to the plaintiffs, or alternatively perhaps something in between. They might react by moving the plaintiffs' price down and the Dompier [Leffler, R. 1738] price up. So at some sense I think we can sort of characterize them up, Dompier price up or plaintiffs' price down or price in the middle.

Q. In order to determine, quantify the damages suffered during the Seventies,

would you have to determine the effect in the market at that time of a price change at the Dompier stations or the plaintiff stations to see what impact it had on the plaintiffs' volumes?

A. Yes. The impact that occurs, the competitive injury is something occurring at the level that most of us here operate in, namely the retail market. So that the impact that ultimately is going to occur or the change in the sales that the plaintiffs would achieve in the absence of the price discrimination will result from differences in the prices at the retail market. So a necessary step, in order to answer question number five, is to determine how the plaintiffs are impacted by changes in their own price, if what's happening is their buying price is falling, changes in Dompier's price, price increases to the Dompier

stations, if what's happening is the Dompier price rising, or both, coming together.

Q. So you want to analyze what happens to the plaintiffs' sales if the Dompier retail price [Leffler, R. 1739] increases? **A.** Yes.

Q. That's one issue? **A.** Yes, that is one necessary element to answering number five.

Q. To find out what would happen to the plaintiffs' sales if the retail price at the Dompier stations was raised? **A.** Yes.

Q. In like manner you want to determine from the market what happened or would happen to the plaintiffs' sales if they lowered their price? **A.** Yes, that's correct.

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[Leffler, R. 1774]

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Q. (BY MR. WHALEY) Dr. Leffler, would you briefly tell the jury what the different periods of time, how you handled them in determining damages? We heard about allocations, we heard about price control. I wonder if you could, just referencing the time line [Leffler, R. 1775] there, tell the jury the significance of those different time periods. **A.** Yes. I think it's easiest to sort of divide on July 1975, that's the date where Mr. Dompier acquired the Freya and the Monroe stations.

Before July 1975 there is a period, a period indicated on that chart extending from October 1974 through July 1975 when I have calculated no damages from the price discrimination. And the reason for that is that my method of calculation limits the damages to the

sales and profits that would be gained during the period that a retail price would change. During that particular period the Dompier supplied stations were, in fact, paying a price equal to or on occasion greater than what the plaintiffs paid. So there was no price difference and there would therefore be no change reflected in the retail market and therefore, of course, no increase in the gallonage. So that's a zero damage calculated period.

During the period from May of 1973 through October 1974, the amount of gasoline that a plaintiff sold was basically determined by the allocation rules. Now, the allocation rules would allow a plaintiff to sell an amount, and in fact nearly all of them would sell an amount that was determined by a previous [Leffler, R. 1776] period's gasoline sale. So what I did there was I did not

calculate any damages for any price differential that might exist during that period, I rather calculated damages because their allocation amount was less than it should have been if there hadn't been price difference.

A specific example: The amount of gasoline you could sell in October 1973 was based on the previous year's sales, October of 1972. The plaintiffs I determined sold less gas in 1972 than they would have sold if there hadn't been the price discrimination. They would have had bigger allocation therefore in nineteen-seventy--they would because they would have sold more, they would have had a bigger allocation for October 1973. I have calculated damages for that increased allocation they would have had because of the discrimination that impacted sales prior to the allocation period.

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[Leffler, R. 1778]

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Q. Can you tell us why you believe there was damage during the period of time when you calculated no damage?
A. Well, two reasons: First of all, the favoring of Gull is occurring throughout the entire period. Gull is always receiving a lower price and setting low prices at the retail level. I have not attempted to calculate any damages based on that. The data was not sufficient to allow me to do that and I haven't done it. So that discrimination existed, certainly lost sales resulted from that, but I haven't attempted to calculate them. In addition to that, and I believe probably more important than that--

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[Leffler, R. 1779]

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A. As I said, I think more important than that is the period I indicated there are no damages, basically the period after 1974 allocations are off, but the Dompier supplied stations are paying high prices. Dompier has raised their buying price up to retail tank wagon or above. Nevertheless, because of the prior period's discrimination, consumers have formed purchasing habits; that is, in the marketplace the Dompier supplied stations would be viewed as low price stations, the plaintiffs' stations would be viewed as stations with higher prices than them. And consumers, for example, would--some consumers would stop even checking prices at, say, Mr. Rigg's station [Leffler, R. 1780] because they have learned over a period

of time they buy gas at Monroe because it's cheaper.

In addition to that, the stations supplied by Dompier have set up a business operation that was based upon receiving a discount from tank wagon, high volume, low price kind of operation. They continued that kind of operation throughout that period. In fact, that period ends with the sale of those stations to the John Dompier Oil Company, so that I believe, in fact, the actual purchases of consumers were impacted even though they were paying equal prices there because of the earlier period impacting into subsequent periods.

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[Leffler, R. 1906]

* * *

Q. And you only measured the effect, if any, upon the plaintiffs' stations by

four Dompier stations, not all of the Dompier stations, is that correct, sir? A. That's correct, I had all the owned stations in there, but not all the stations.

Q. And did you only really examine the data for your gasoline sales, for example, for the period of 1975 through 1978? A. I examined the data from '72 to '81.

Q. But did you base your calculations on the period [Leffler, R. 1907] 1975 to 1978? A. My calculations are based on '72 to '81. The regression analysis for the price relationships is based on data from July 1975 to December 1978.

Q. And that regression analysis, if we may, is the genesis or the springboard from which your damage calculations were made, is that correct? A. It is--as I hope I have explained it, certainly a piece in that analysis, yes.

Q. And did you then, using and relying upon the data that you viewed from July '75 through December of '78, extrapolate backwards in time to the period 1972 through 1975? **A.** I would rather say '72 through October '73. Since after October '73 there is sort of a different method of--either no damages or a different method of calculating them due to the allocations.

Q. Okay, and did you, though, still use your regression analysis data in measuring the effects during October '73 up through July of '75? **A.** You lost me there. The regression--the calculation during that period is either no damages, so it is really not based on regression analysis at all; that is, in my--number one up there is answered no, so I in some sense don't go on, there was no [Leffler, R. 1908] price difference for that period, and I did not calculate any

damages and the allocation period is based upon '72 in a general sense, '72 through May of '73.

Q. Just so we are clear on this, there was a period of time where all of the Dompier service stations that you measured were paying as much or more than the plaintiff stations, according to your calculations? **A.** I would have to look. The reason I hesitate is because the Third Avenue station was purchased by Mr. Dompier during the period where I have no damages, so that while the average of the four Dompier stations show no price difference, one of those four, in fact, has a price difference, that being the Third Avenue station. So I am not sure if I have-- I have the data right here I could look at but whether it has appeared where none of them are.

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[Leffler, R. 1958]

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Q. (BY MR. ROBINSON) Dr. Leffler, if your theory is right, that these plaintiffs have been damaged, would you expect that when Dompier stopped supplying a particular service station in a competitive area with one of the plaintiffs' stations that that particular plaintiffs' gasoline sales volume would go up? A. Which--what, stop supplying which gas station?

Q. A gas station, the Dompier gas station or a salary operated station that is very close to-- A. An important--

Q. --plaintiff. A. Freya, Market, Third or Monroe? Yes, I certainly would, if he stopped supplying one of those.

Q. And conversely, if we found a service station that was a Dompier

supplied station whose buying [Leffler, R. 1959] price at one day was lower than a plaintiff's price, but then several days later the two prices became equated or equal, would you expect there to be any change in the volume of those two stations? A. Well, that is a little more complicated. We would have to address; A, is it one of those four stations, one of the important ones; B, did it cause a change in the retail price; that is, those stations are doing a type of business based on a low selling price, and I don't expect them to immediately raise their retail prices, so, if indeed it translated into a retail price increase, yes.

Q. And if it did not? A. If the retail price didn't change?

Q. Right. A. Consumers are interested in retail prices. They don't care about wholesale prices. At least most of us

don't, so there would be no--the impact occurs through the change in the retail price.

Q. I want you to hold onto that very statement, if you will, and try to follow me through this. Let's assume that we have before us a large felt board and we have one of those velcro stickers on back of different symbols. We have one symbol that is a Texaco symbol. Let's assume we take that Texaco **[Leffler, R. 1960]** symbol and we stick it up the back of this big white board. Then we follow trucks coming out from that symbol and going down to the plaintiffs' stations. Then we also put on that board different stickers that show one for the Dompier offices and bulk plant and then one down below that for Dompier salary operated stations and one for Dompier delivered stations. Let's assume that we complete the

picture by putting one on over here for Gull Oil Company. Do you have that mental picture in mind? A Yes.

Q. As we come down from Texaco, Texaco first decides at what price to sell to the plaintiffs and Texaco decides at what price to sell to Dompier, am I correct in that? **A.** Yes.

Q. Okay. Now, there is no injury or effect on competition if those prices are different because they are different functional levels, correct? **A.** No. What period are you talking about?

Q. Any period of time you want to take a long as we have existing from this period right now are those two functions. That is all I put on the board. That is all we are concerned with. Dompier strictly a wholesaler, plaintiffs strictly retailers? **[Leffler, R. 1961]** **A.** For example, Dompier selling to a school district?

Q. That would be a good example, any competition there? **A.** No.

Q. Okay. Now, let's assume that Dompier then delivers gasoline down to a dealer supplied station? **A.** Yes.

Q. Okay. If Dompier, although he still enjoys a lower buying price than the plaintiff does, does not pass on any of that price advantage, on down to his dealers, do we have any effect on competition? **A.** No.

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[BEFORE THE COURT, R. 2124]

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MR. WHALEY: Your Honor, there were a number of areas that Mr. Litvack talked about and I am prepared to address all of them but are there--if there are any particular ones that the Court may wish me to address it might be more productive. There are two that I think may have--

THE COURT: One specific one is the argument that there were no salary operated stations prior to '74 and therefore in and of itself the damage calculations are flawed, and they are not broken out, I might say.

* * *

[R. 2129] **THE COURT:** But is that the same circumstance where Texaco is selling to Mr. Dompier and he in turn is selling as a wholesaler? How can you compare that as being the sale of a commodity under the same circumstances?

MR. WHALEY: Let me see how to best explain this. The Robinson-Patman Act--

THE COURT: I can understand the theory where they are both retailing or where Dompier is buying at wholesale and then in fact with the knowledge of Texaco, I am satisfied there is reasonable evidence to establish that, where Texaco knows he is selling it at

retail, I can understand that, but my concern is the Dompier supplied, nonsalaried sales, where in fact he is selling as a wholesaler.

MR. WHALEY: The Robinson-Patman Act, if [R. 2130] you read Perkins v. Standard Oil was a case just like this one where the pricing, the discounted price was passed through two levels of distribution before it got to the retail level, but there was still a discount when it got to the retail level. Just like Mr. Koziuk. Mr. Koziuk still had a two cent price advantage over my client sometimes more than that, between '72 and '73 so the fact pattern is identical to Perkins versus Standard Oil. The impact on competition occurred at the customer level, the Robinson-Patman Act applies to competition between the favored and disfavored purchase or the disfavored purchaser and the customer of

the disfavored purchaser so the injury here occurs in competition between my clients and customer of the Dompier Oil Company. Now the customer of the Dompier Oil Company in 1972 is getting a two cent price advantage, so that is the level we look at now just like we look at the Dompier Oil Company when it is salary operating a station after 1975. At that level my clients have a competitive disadvantage of at least two cents a gallon, that resulted in a verdict for the plaintiff in Perkins versus Standard Oil which was affirmed by the Supreme Court. The Ninth Circuit reversed it saying that the level of [R. 2131] distribution it passed through two levels made the injury too remote, and the Supreme Court said no it is a third line injury and it covers the competition between the customer of the favored purchaser Mr. Koziuk and the

disfavored purchaser the plaintiffs. So when you are looking at the period of 1972 the favored purchaser is Mr. Koziuk and he has a two cent, just like Mr. Dompier in 1975 who has a four cent advantage. What Dr. Leffler has done is determined if Mr. Koziuk who is our competitive who has the favored price, paid our price then he has assumed that Mr. Koziuk would only raise his retail price by that two cents. Now he has testified, that is the same as looking at Mr. Dompier who has a four cent advantage and Mr. Dompier when he has to pay our price raises his price four cents. It is the same exact situation, it is just a third level of distribution which the Robinson-Patman Act covers. And so all Dr. Leffler has done is say that if under the knowledge that he gained in 1978, '75 through '78 that a one cent price increase at those

stations will have this impact on the plaintiffs' gallonage and has gone back to '72 and said that a one cent price increase at Mr. Koziuk's station will result in these gallonage increases.

[R. 2132] **THE COURT:** I don't understand. Is Texaco supposed to say to its wholesaler who is selling to Koziuk you have to sell that at the same price we are selling to the plaintiffs?

MR. WHALEY: No, the Standard Oil case that you are so familiar with addressed that, the same case a jobber case that said no, the remedial order said lower your dealer's price. The way Texaco would remedy this is not to raise Mr. Dompier's price, it's to lower our price, and that is what the remedial order in the Standard Oil case did, the order back to Standard Oil was lower the price to your dealers down to the level that is of Mr. Koziuk's level. Now

Texaco can control that price. It has given Mr. Dompier too big a discount and it is impacting competition at the customer level and that is prohibited by Perkins versus Standard Oil. It is one of the reasons this overcharge argument is so complicated because the price to Texaco--

THE COURT: Are you saying that Texaco sets its price based upon whatever Dompier is charging Koziuk.

MR. WHALEY: If it is going to give a discount, and the discount is too great to cover, if it is impacting competition just like--let's take [R. 2133] the period Mr. Dompier is not selling at retail. It is obvious to me that 3.95 cents is way more than the discount should be. In fact he can use all that at the retail level. There may be some level that one could say that it was cost justified. But there is no

evidence in this case or in Perkins versus Standard Oil that that is true so if you read the instruction out of Perkins versus Standard Oil where you are a wholesaler and a retail, you have to price so that the impact on competition at the customer level is not there, otherwise Texaco has to change its pricing system. It can't give Mr. Dompier a discount that he can pass on to another station and immediately impact competition with the disfavored purchaser, that was the whole Perkins versus Standard Oil case. So Texaco could have remedied this by merely lowering the price to the plaintiffs or raising the price to Dompier, I mean it is their choice but there is not anything that's magic about how they eliminate price discrimination.

(Discussion off the record.)

MR. WHALEY: Well, here is the--I am sure the Court has read Perkins but Mr. Ebel has pointed out to me in my brief where it is, and basically what I am saying is the holding in Perkins vs. [R. 2134] Standard Oil. Texaco controls the price at which they charge the plaintiffs and controls the price which they charge Mr. Dompier, so when the competitive injury occurs, they have to either lower the price to us or raise the price to Mr. Dompier. The fact that they are salary operated makes no difference in the competitive level at which this case is addressed. We could have tried this case if Mr. Dompier had never salary operated a station, if he had supplied stations throughout as long as they were getting a discount and as long as that was not injuring competition. Have I covered that? Any other questions about that?

THE COURT: What if Dompier was selling to Koziuk at the same price Texaco was delivering it?

MR. WHALEY: To the plaintiffs?

THE COURT: Yes.

MR. WHALEY: Then there wouldn't be any competitive injury. If Mr. Koziuk--

THE COURT: That is a decision that Dompier makes.

MR. WHALEY: That is a decision that Dompier made. If he wholesales that way Texaco is probably giving away some money they shouldn't be giving away but we would not be in here today unless, [R. 2135] there are circumstances where that could occur, I guess, but I can't fathom what they are.

THE COURT: Well, Dompier changes its prices daily and does Texaco run around and find out what Dompier is charging and sets its price by what Dompier is charging?

MR. WHALEY: It sets its price based upon the competition level at which it is being affected. What the Court is suggesting is if Texaco could give an intermediary any discount it wanted and it would be immune from the anti-trust laws if that intermediary turned around and sold it, kept one penny and gave the intermediary four cents and it was just destroying the competition between the customers, and that is okay because they made an intermediary sale. That is not true, Perkins vs. Standard Oil says you can't do that, Texaco would have to--they had notice, they could see that these volumes were drastically increasing in '72. Why is that, because the discount is hitting the competitive level at my clients' level, Mr. Koziuk is giving a better price. They have an obligation to do something, either to raise Mr. Koziuk's price or lower ours

and what the Court's questions implies is that if Texaco makes a sale then they can forget [R. 2136] about the impact at any other customer level, that is not what the Robinson-Patman Act says. Take an example if they gave Mr. Dompier a dime off of retail tank wagon and so he takes the dime, keeps a penny and the hauling allowance and gives Mr. Koziuk nine cents, I mean the implication is that because it is passed through to Mr. Dompier it is legal. Well, of course the Robinson-Patman Act says if it affects competition at the customer level, not just the purchaser but the customer level it is still illegal. And that is what we have here is a discount passed through Mr. Dompier to Koziuk and Harder, and therefore the competitive level at that level is injured. And Texaco under the Robinson-Patman Act is obligated not to do that.

So what I am saying about Dr. Leffler's regression analysis is it only determines the impact on the plaintiffs' sales of a price increase at one of those stations. And whether it is salary operated or supplied really makes no difference.

The second issue that the Court made, I mean seemed to want to address was the overcharge. Undercharge theory. We are not trying in hindsight to predict what would have happened in the market from 1972 to 1981. Texaco discriminated in the [R. 2137] market and so we all have to project what would have happened.

The estimates that you have heard in this case are the most conservative that one can imagine in predicting what would have happened in the market. If it is an overcharge case, we have measured the specific damages caused by the

overcharge. Dr. Leffler has measured the sales lost to Dompier because he had a lower price. Now, that question was asked about six different ways. He concluded that the only way to measure that is to determine what would happen if Dompier paid the same price we did. Now, Texaco if it wants to argue to the jury that Mr. Dompier would not have done anything but keep selling gas, even with a price rise and the jury believes that, then we are going to lose the case. But that is not the evidence and it belies economic theory. If Mr. Dompier had a price rise of four cents he wouldn't able to eat it, he testified it would run him out of business in November of '75. He further testified that he would raise his price at least four cents. And so that is based upon the evidence. And that calculation calculates lost sales only--

THE COURT: I do recall his testimony [R. 2138] because I have it in my notes, that competition probably would not have allowed him to raise over four cents. I recall that testimony.

MR. WHALEY: That is just a jury issue. Texaco can argue that he would have eaten it and I think the evidence that every station that tried to compete in that market at retail tank wagon went out of business, it couldn't be done. So, I don' think that is speculative.

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[Evans, R. 2901]

* * *

Q. Would you tell the jury briefly your duties, I mean very briefly, with Texaco between 1971, when you went to work for Texaco, and when you left?

A. Generally speaking my duties as a sales representative were to monitor sales of Texaco branded merchandise

through retail service stations. [Evans, R. 2902] And also in addition to that I was the intermediary between the company and the service station dealer, I was responsible for contracts, leases, pricing agreements, and et cetera.

Q. And what period of time did you first start these duties? **A.** I was employed by Texaco from 1971 until October of 1975.

Q. Did you start in January of '71?

A. That's right.

* * *

Q. (BY MR. WHALEY) Mr. Evans, if you could possibly move the microphone closer, the acoustics in here may not be as good as we would like.

During the period of 1971 did you, along with other Texaco employees, conduct surveys of the market to determine retail pricing? **A.** That is

correct. That was a part of our daily job activity during that time.

Q. And who would you conduct these surveys with? **A.** They were singularly conducted by each representative and presented to the immediate sales supervisor who in turn forwarded it at that time to **[Evans, R. 2903]** the district sales manager.

Q. And in these surveys did you determine prices, retail prices posted at stations operated by the plaintiffs in this case as well as stations supplied by the John Dompier Oil Company? **A.** That's correct.

Q. Would you tell the jury briefly which plaintiff stations you had responsibility for at that time? **A.** I believe in that time I was responsible for 11 investment accounts, including contract retailers. The locations were, if I can recall them all, starting with

Driscoll and C, Francis and Ash, Monroe and Houston, Wall and Houston, rather, Garland and Ash, Maple and Rowan, Monroe and York, Monroe and Sharp, 2321 Northwest Boulevard, Division and Waverly, and 8915 North Division.

Q. In those surveys, did you survey any stations that were supplied by the John Dompier Oil Company? **A.** Yes. They were a part of the market and, of course, we took note of what prices were being posted.

Q. Did you have any discussions with Texaco personnel in 1971, 1972 about competition between the stations that you had responsibility for and stations operated--I mean supplied by the John **[Evans, R. 2904]** Dompier Oil Company? **A.** It was my observation that retail prices posted by Dompier supplied accounts were substantially lower than what was priced by other Texaco dealers.

Q. Did you have any conversations about that with Texaco employees? A. Yes, I had discussed it with my immediate sales supervisor, who would be Bob Vogelman, and also had conversations with the assistant district manager and the district manager.

Q. In those conversations would you have any discussions about the price at which the Dompier supplied stations were purchasing gasoline? A. As far as price specifics, no, I didn't have an understanding of what Dompier was being provided product at what price level, however, it was painfully apparent that there was a substantial difference between the retail posted prices.

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[Evans, R. 2905]

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Q. (BY MR. WHALEY) All right. Can you answer that question yes or no? Did you

have any conclusions as to the--whether or not Mr. Dompier was selling gas to the stations he supplied at a price lower than retail tank wagon? A. Yes.

Q. Did you discuss that with other people within Texaco? A. Yes, I did.

Q. Including whom? A. Bob Vogelman, Tom Bollinger, Ralph Bauman, Mike Edmunds.

Q. What was your conclusion?

THE COURT: Just a moment. Who were--

THE WITNESS: To identify the particular individuals, Ralph Bauman and Mike Edmunds would be [Evans, R. 2906] territory supervisors. My immediate sales supervisor was Bob Vogelman. Tom Bollinger at that time was assistant district manager here in Spokane.

THE COURT: I will allow him to answer. Overruled.

Q. (BY MR. WHALEY) What were your conclusions? A. I believe that from my conversations with these Texaco employees, plus my observations in the marketplace, that John Dompier was providing product for a substantially less price than what Texaco was supplying their own dealers.

Q. Was this subject discussed between you and these other Texaco employees that you have just described? A. Yes, it was.

Q. Did you have any discussions about the impact of the Dompier supplied stations on the throughput sales of your Texaco dealers? A. Yes, I had conversations to that effect.

Q. And throughput is what? A. It is the sale of Texaco gasoline through stations in which Texaco had a direct or indirect investment. It was different from distributor supplied accounts.

Q. That would be stations that are operated by independent dealers such as the plaintiffs? [Evans, R. 2907]

A. That's correct.

Q. And in those conversations you had, what was the opinion expressed by you concerning the impact of the distributor supplied stations on your own dealers?

A. It was apparent not only from observations in my daily activities but based upon sales performance reports that were prepared by the company, that in my area the sale of gasoline per month rose, but at the same time the amount of gallonage sold in the investment accounts decreased. In other words, what we call throughput was showing month after month after month declining sales, but yet at the same time total supply or sale of gasoline in Spokane was increasing.

Q. At what stations was the total supply increasing? **A.** These accounts were generally supplied by John Dompier Oil Company.

Q. And did you reach any--have any discussions about the impact of those stations on your own dealers? **A.** Yes, I had conversations to that effect.

Q. And what were the conversations about?

MR. ROBINSON: Objection, lack of foundation as to time period and with whom.

[Evans, R. 2908] THE COURT: I think you should lay the foundation.

Q. (BY MR. WHALEY) In 1971 did you have any discussions about that? **A.** Yes, I did.

Q. And with whom? **A.** The four mentioned individuals, Ralph Bauman, Mike Edmunds, Bob Vogelman and Tom Bollinger.

Q. What observations did you make about the impact of the distributor supplied stations on the stations that you had responsibility for, such as the plaintiffs? **A.** Because of the apparent pricing difference posted in the marketplace, and the proximity of these accounts to Texaco investment stations, it appeared that there was an intense amount of intracompetition regarding price.

Q. Intrabrand? **A.** Intrabrand competition, (nods head affirmatively).

Q. While you were sales representative, did you have any opinions as to what the market for gasoline was in Spokane? **A.** Yes, I did.

Q. And what, in your opinion, was the market for **[Evans, R. 2909]** retail sales of gasoline? **A.** In terms of area, could you please define--

Q. Yes, just the geographic area.

A. Geographic area?

Q. Yes. A. Based upon my studies and my surveys and the travels that I conducted as a part of my daily activity employed by Texaco, it appeared that traffic patterns in Spokane were all more or less connected. The market as a whole, it seemed that one area would have an effect on another area, people would go out of their way to purchase gasoline.

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[WILLIAM FISHER, R. 2989]

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Q. (BY MR. EBEL) Was there any kind of yearly or other periodic review that Texaco did to determine whether they wanted to continue doing business with somebody as a distributor? A. Not to my knowledge.

Q. * * * Is it correct under this evergreen clause that you have mentioned, did Texaco have the right under the contract to, as you understood it, to cancel a contract with the distributor on a certain period of notice? A. Yes, and also the distributor had the same [Fisher, R. 2990] privilege.

* * *

Q. * * * Did you as vice-president then of the sales department or others in your department prior to any allocation regulations or embargo give to your regional or district people any guidelines as to what they should look for in determining whether they were going to continue to extend the distributor discount to a particular fellow who had a distributor contract? A. Not to my knowledge. We had a marketing plan. We had an annual

meeting every year where we discussed what the forthcoming objectives would be. And I can write down whether it was about a distributor, anything that fine.

Q. * * * I have shown you Exhibit 58. Is this a memorandum which you wrote on November 29, 1973 to Mr. Kinnear? **A.** I personally did not write the letter but I did sign the letter.

Q. And you approved its contents? **A.** Yes.

[Fisher, R. 2991] Q. And the contents went out over your signature? **A.** Yes, sir.

Q. And does this memorandum relate generally to your proposal to changing the method of pricing to distributors from a discount off retailer tank wagon to a distributor tank wagon price? **A.** Yes, sir.

Q. You say in the last sentence of the first full paragraph, "This change,

which has legal department approval, will give us desired pricing flexibility independent of yearly contractual arrangements, excuse me, contractual agreements?" By that were you saying that that would allow you to change a price to a distributor? **A.** Yes.

Q. At various times within the year? **A.** Yes.

Q. In the earlier deposition you testified at page 49, lines seven through 17, quote, "Why did you think that was necessary, referring to the flexibility to change the price? And I will show you this in a moment."

Question, this is a quote, "Why did you think it was necessary?" Answer, "Well, to have prices off retailer tank wagon throughout the **[Fisher, R. 2992]** country, and that is the way it had been done for the last 40 years, I could not see the rationale for us to continue to

do business that way, because in some areas competitive conditions are different, so this would allow you the flexibility to either increase or decrease, depending on the market condition in a particular piece of geography. Some distributors also provide different services than others, I will show you that." **A.** Okay.

Q. Is that a correct statement of the reasons behind why you felt it was necessary to have this pricing flexibility? **A.** Well, I think if you are running a business, you need that flexibility. When you are looking at a country the size of the United States of America because market conditions change in different areas, as I mentioned earlier, I felt strongly about that for a number of years.

Q. You also mentioned at the very end of that testimony that I read that some

distributors also provide different services than others? **A.** Well this is where I have a hard time coming up to give you what are the different services. They provide better services, I would say. They all have, **[Fisher, R. 2993]** you know, practically the same discount, some just do better than others.

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[Fisher, R. 2995]

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Q. (BY MR. EBEL) There is at page 72, line 21. In Mr. Kinnear's letter, he said at the bottom of page two, "These distributors are shedding many of their traditional functions and have concentrated their sales in very high volume outlets. This has reduced their per gallon overhead cost to a point where a good portion of the discount is not being utilized to defray their cost

of distribution at all? **A.** Absolutely.

Q. Is that one of the things you were referring to when saying the reasons for the pricing flexibility was that some distributors were providing different services? **A.** Yes.

Q. So if a distributor was not providing all those services, would you quote a higher price? **A.** May I cite an example? Dual distribution in a **[Fisher, R. 2996]** metropolitan city here, Chicago, versus a rural distributor out here 150 miles away, his product is delivered to his plant. He has smaller trucks. We deliver--large dual distributors pull right out of your terminal, right straight to their accounts.

Q. And those large dual distributors should, therefore, pay a higher price? **A.** In my opinion, yes.

Q. Because they are performing less of a service? **A.** Less of a service.

* * *

[BEFORE THE COURT, R. 3159]

MR. ROBINSON: While we are doing that, could I bring up another related matter, if I might, Your Honor? It occurred to me, in thinking about the closing argument, that insofar as Texaco's meeting competition defense is concerned, we really only intended to establish that there was meeting competition up until mid-1973. We don't really intend to argue that there was so-called meeting competition under the traditional sense of the meeting competition rule. If it is not too inconvenient for the Court, we would ask that a special interrogatory be given to the jury to find whether or not in fact meeting competition existed up until mid-1973, or at least May of 1973. Then

I think we have preserved the argument, if it's ever needed to be raised at the appropriate level, either with Your Honor or with the--whatever court, that the [R. 3160] meeting competition defense is good at least to part of the period. And what impact, if any, that has without the special interrogatory, I feel some concern about that the jury may think, well now, wait a minute, do they have to prove it for the whole time, and what kind of instruction can we give them that says you have to consider and then cut it off. I mean, I think the only way for it to really work, work so that all of us here can decide at the conclusion of this case where meeting competition really fits into this, is to say, give the special interrogatory to the jury, did Texaco in fact meet competition by extending a lower price, A, Dompier, and have a

blank or something of that nature, yes or no; B, Gull Oil Company, and then something to the effect you are only to consider whether they did that from up until May of 1973, or something of that nature, because then I think that would get their answer back, then we know what the facts were and what the actual proof was.

I would like you to give some thought to that in view of how else do we know whether there was a meeting competition for part of this period and how else can we then argue the a flexibility of the particular--

[R. 3161] **THE COURT:** Well, it seems to me that if the instruction that I am giving, that the Federal Energy regulations and statutes do not afford a defense, if that's in error, then clearly if the plaintiffs--if the

verdict is for the plaintiffs, the case would have to be retried anyhow.

MR. ROBINSON: I understand that, but I think we can avoid the retrial issue if we have a special interrogatory, for two reasons: One scenario would be, let's assume that the jury decides that there was meeting competition, but only up until May of 1973, which I think is a very sound decision on their part. I mean, what other evidence is there? But they say to themselves, wait now, it wasn't true through the whole period so we should ignore it, because reading Your Honor's instructions it says that's not the Federal Energy regulations that took place thereafter it doesn't excuse Texaco from continuing to meet that obligation of proving meeting competition.

The second scenario is that they could decide that the meeting competition defense was good up to that period of time and then come to a--or even decide it is not, and come to the conclusion that it is not, but be troubled by how it fits into the case. [R. 3162] I really think if a special interrogatory goes to the jury on this score and they come back with an answer, then we can all argue what the applicability, if any, of that particular meeting competition defense is. Does it simply go to the years in which it was in force; and, secondly, does the Federal Energy regulation in fact excuse Texaco from having to meet the competition. We then again preserve that issue, which I think is central to the Federal Energy Administration issue.

THE COURT: It seems to me that assuming they find it was met to '73 and

not thereafter, and assuming then the Court of Appeals should determine that Texaco was in fact entitled to rely upon meeting competition thereafter, subsequent to '73, it seems to me that a new trial would be required regardless.

* * *

[R. 3163]

* * *

MR. ROBINSON: --because the regulations don't really forgive, per se, the meeting competition defense, don't forgive the price differential.

So, it makes my closing argument, really, **[R. 3164]** about meeting competition meaningless, and I don't think I could even argue meeting competition, because one time I would be defending your instructions, and at the other time argue to the jury, you should consider it. And in all candor, again, I don't intend to argue beyond maybe even June

of 1973 that there was any meeting competition as you and I know that as the traditional concept.

THE COURT: Assuming the jury found that there was.

MR. ROBINSON: Adequate evidence?

THE COURT: That they found that Texaco's lower price was based upon meeting competition to '73, and then assume the Court of Appeals should determine that Texaco should be entitled to rely upon that.

MR. ROBINSON: Under Phone Tel. (phonetic) or one of those cases, yes, sir.

THE COURT: Whatever it may be.

MR. ROBINSON: Yes, sir.

THE COURT: Isn't another trial required so that the--

MR. ROBINSON: It would be all over as I view it then, Your Honor.

THE COURT: Because you are suggesting the scenario would be the Court of Appeals would say if [R. 3165] you were meeting competition on the date, the effective date of the price controls and allocation, regulations, then--

MR. ROBINSON: It's a legal price then. You see, then it's a legal price, and then the controls, whatever part they play in that, and Mr. Whaley and I can argue what part the controls play at a later date, either before Your Honor or before whomever, but then the issue is framed and we know whether in fact meeting competition is an item that the jury should consider and should be locked in place throughout the control period up until January 20 of 1981.

THE COURT: All right. I will hear from Mr. Whaley.

MR. WHALEY: Your Honor, first it's not the regulations that said there wasn't any meeting competition defense after 1973, it was the market, and the regulations just acknowledge that. So it's not that the regulations stop meeting competition, the market did.

Secondly, if I were Mr. Robinson I would argue this, and I think he can, that the plaintiffs, if we met competition between 1972 and 1973, there is no way that you can surrogate that period out under [R. 3166] their damage theory, and so they haven't proven their damage theory with reasonable certainty, and if they are meeting competition for that amount of time and you find it, then you can't surrogate it out and the plaintiffs aren't entitled to a verdict. I think we have not said our damages up to '73 are so much and then after are so much, and I would not disagree with that

argument. If the jury finds that they were meeting competition up until 1973, then the verdict should be for the defendant because there is no way they can separate that out. I think he can argue that and I won't deny it.

* * *

[CLOSING ARGUMENT - WHALEY]

[R. 3175]

* * *

We have no bone to pick with the John Dompier Oil Company. If Texaco had given any of my [R. 3176] clients the price that this John Dompier Oil Company got, I am confident that they would have tried to compete with that price just as hard as the John Dompier Oil Company did. But they didn't. They went and they started a deliberate program to begin to change someone who had been a distributor, who had markets like school districts and small accounts and

farmers, and you have seen that referred to by Mr. Kinnear in his very letter. And they deliberately, not ignoring the situation, they deliberately changed him, they encouraged him to go into the retail market, encouraged him to go into prime sites. They developed a specific program to do that and you see in this very period of time — the wholesale function that had been performed by the Dompier Oil Company is lost, and 90 percent of their gas business becomes retail gasoline sales through their own stations by 1975. We have no objection to sales to wholesalers. That is a legitimate function for wholesalers to be wholesalers. Our objection is when you take someone who has been a wholesaler and you turn him into a retailer.

* * *

[R. 3182] * * * Now the first element that will be listed to you in that instruction will be Texaco made a contemporaneous sale of gasoline to the plaintiffs, Dompier and Gull. That's the first element you will have to consider.

The second will be, was the price that they charged on those sales lower to the Dompier Oil Company or to Gull or to the customers of either one because the Robinson-Patman Act doesn't just affect competition between the Dompier Oil Company and the plaintiffs, it also covers competition between the customers of either one.

Let me give you an example. This is hypothetical. If Texaco had given Mr. Dompier 10 cents off of retail tank wagon price and he had only kept a penny of it and, so, he was giving his dealer nine cents of that margin, and you can

see that dealer could post nine cents below the plaintiffs and there would be substantial impact on competition. The Robinson-Patman Act applies to not only conflict between the favored purchaser and the disfavored purchaser, the plaintiffs and Dompier, but also the customers of either one. So during the period 1972 through early 1973, May 1973, you will focus on the [R. 3183] competition at the customer level, which will be Mr. Harder's station and Mr. Koziuk's stations and the Red Carpet stations, at that level competition between the plaintiffs and those stations. Mr. Dompier then acquires the first station in 1974, and then acquires two more in '75, then '77 and '78 acquires more. And you will then be concentrating on the competition between his salary operated stations and the plaintiffs. The Robinson-Patman Act

applies to both, and you will see that when you read the instructions.

The second issue is, did they charge a lower price to the Dompier or Gull companies, and in the period 1972 through March 1973 you will focus, did that price then, a portion of it, pass on to the customers of Dompier or Gull. I don't think that either one of those issues are going to be disputed.

The third issue will be, were the products of like kind and quality, was the gasoline the same.

The fourth issue will be, did the price difference impact the ability of the plaintiffs to compete with the John Dompier Oil Company, the Gull Oil Company or the customers of either. And finally, were they injured.

* * *

[R. 3189]

* * *

Also an effect on competition is that the Dompier Oil Company was able to use the advantage that it had to really acquire stations. In the early period it gave a discount to the stations it was supplying. They sold high volumes, raised the price to those stations until in 1975 they were paying at or near retail tank wagon, and they can't survive in that market doing that. So he buys then three [R. 3190] stations. In '74, he buys Third Avenue; in '75 he buys Freya and Monroe. He buys Mission and Magnolia later from Mr. Harder and he also buys Mr. Harder's Market Street station. The Market Street station held on a little longer. It held on paying a higher price up until he bought it, I believe, in 1978. But the impact is the same. As he raises that price, that man

can't stay in business over the long run by paying retail tank wagon, trying to compete in the self-serve market. Another effect on competition that's clear is the fact the plaintiffs were starting out behind in this entire period of competing.

* * *

[R. 3297]

* * *

During the period of 1971 through 1972, the [R. 3298] Dompier Oil Company was passing discounts to the retailers it was supplying, and if you will look at Exhibit 804, it gives you the period, and that's not Mr. Dompier's letter, that's prepared from invoices.

* * *

[R. 3303]

* * *

Another thing that was suggested is that the plaintiffs were trying to run

wholesalers out of business. Now, that's simply not true. If you look at the whole case, when Mr. Dompier is acting as a [R. 3304] wholesaler, there is simply no problem from our concern, and you will find when you read the instructions that there is a specific instruction that talks about how you can have an impact on competition if a wholesaler passes on his discount to a retail level.

This is not new. This is not something we have made up. This case could have been brought if Mr. Dompier had never salary operated a station, but it only supplied stations the whole time if he was passing the discount to them. The Robinson-Patman Act applies to customers, too, not just the purchasers. So you will find the instruction that says that if Mr. Dompier was passing on a discount and Texaco knew

about it, and you heard how they knew about it from Mr. Evans and from the long range plan where they talk about their knowledge of it, that that can be price discrimination. If the favored price is passed through the purchaser like Mr. Dompier to his customer, that's price discrimination. We don't have any problem with wholesalers being wholesalers and retailers being retailers, and don't get hung up as if we are trying to substitute some other form of business. There is a suggestion that somehow we are trying to substitute Mr. Sills or Mr. [R. 3305] Robinson for Mr. Dompier. I think that's an incorrect statement.

* * *

HASBROUCK V. TEXACO
JURY INSTRUCTIONS AS
GIVEN BY THE COURT
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
NO. C-76-27

INSTRUCTION NO. 7

I will now summarize for you the contentions made by the parties.

The plaintiffs allege that: Texaco has violated a federal statute, the Robinson-Patman Act.

More specifically, the plaintiffs contend that Texaco has violated the Robinson-Patman Act by discriminating in price between the plaintiffs and some of their competitors. The plaintiffs allege that they are in competition with John Dompier Oil Company, with Gull Oil Company, and with customers of Dompier Oil Company, and they contend that they have been injured by reason of this discrimination.

Texaco denies that it has violated the Robinson-Patman Act, that plaintiffs

were injured by any alleged violation, and that plaintiffs were in competition with Dompier, Gull, and/or customers of Dompier or Gull.

Texaco also asserts an affirmative defense whereby it contends that its lower prices to Dompier and Gull were extended in good faith to meet an equally low price by a competitor of Texaco to Dompier and Gull.

INSTRUCTION NO. 8

The foregoing is merely a summary of the claims of the parties. You are not to take the same as proof of the matters claimed and you are to consider only the matters which are established by the evidence. The allegations of the parties have been outlined solely to aid you in understanding the issues.

INSTRUCTION NO. 9

You are instructed that the affirmative defense of cost justification set

forth by Texaco has been withdrawn from your consideration and is no longer a matter to be decided by the jury. You are not to concern yourselves with the reason for this withdrawal.

INSTRUCTION NO. 10

The following facts have been admitted by the parties to be true:

1. In the Spokane area, Texaco sold gasoline to plaintiffs, to other persons who have resold Texaco gasoline at retail, to John Dompier Oil Company ("Dompier") and to Gull Oil Company ("Gull").

2. The gross profit earned from sales of gasoline by a person who sells gasoline at retail is a function of the number of gallons he sells times his gross profit margin per gallon.

3. Each of the plaintiffs operated Texaco retail gasoline stations for the following periods:

Operator	Date	Place
RICK HASBROUCK (Rick's Texaco)	6/71 - 10/6/75	Driscoll & "C" St.
JAMES O. SILLS (Jim's Springhill Texaco Service)	10/61 - 10/29/78	Garland and Ash
ALVA N. BLUE (Al Blue's Texaco)	7/71 - 4/30/81	Maple and Rowan
JOHN W. BEVAN (Bevan's Texaco & Towing and Bevan's Northwood Texaco)	6/67 - 6/1/78 8/56 - 11/30/75	3rd & Lincoln Wall and Houston
RICKY A. RIGG (Five Mile Texaco)		West Francis

Operator	Date	Place
CLIFFORD N. ROBINSON (Hillyard Texaco)	1955 to 9/77	I-90 & Medical Lake
GENE C. ROBINSON (Hillyard Texaco)	1956 - 1979	Market & Wellesley
ALBERT E. ALLEN (Van's Texaco)	1966 - 5/19/81	NW Boule-vard
HAROLD C. HARDWICK (Harold's Texaco Service and Towing)	10/59 - 3/78	North Division
HENRY RIGG (Hank's Texaco)	1954 - 1980	Sharp & Monroe
VINCENT LIES (Lies Texaco & U-Haul)	1968 - 5/24/81	3rd & Maple

Operator	Date	Place
RALPH O. WEBBER (Webber's Auto Repair & Service Station)	9/65 - 9/79	Hamilton & Baldwin

4. During the above periods of time, each of the plaintiffs purchased regular, premium and/or unleaded gasoline from Texaco and resold said gasoline at retail.

5. Throughout the relevant time period, Dompier purchased regular, premium and/or unleaded gasoline from Texaco, and under its contract with Texaco, Dompier was licensed to sell all of this gasoline under the Texaco trademark.

6. Throughout the relevant time period, Gull purchased regular, premium and/or unleaded gasoline from Texaco. However, during the entire relevant time

period Gull never sold gasoline under the Texaco trademark.

7. Throughout the relevant time period, the prices Dompier charged to the retail service stations and car washes to which Dompier supplied gasoline were set by Dompier.

8. Throughout the relevant time period, the prices Gull charged to the retail service stations to which it supplied gasoline were set by Gull.

9. Gull resold part of the gasoline it purchased from Texaco at retail through retail service stations owned by it, and also resold part of the gasoline it purchased from Texaco to others who resold the gasoline at retail.

10. The gasoline which Texaco sold to plaintiffs and Dompier Company was, in all physical and chemical respects, of like grade and quality.

11. The Texaco Retailer Tankwagon price (RTW) is the price which Texaco charged retail service station dealers to whom it sells directly, absent any allowances off the RTW.

12. Since at least 1968, Dompier Company has purchased gasoline from Texaco at prices which were lower than Texaco's RTW.

13. Since at least 1970, Gull Oil Company has purchased gasoline from Texaco at prices which were lower than Texaco's RTW.

14. Texaco also paid Dompier Company an allowance, termed a "hauling allowance," for each gallon of gasoline which Dompier Company purchased from Texaco, as follows:

Time Period	Amount of Hauling Allowance per Gallon
June 1, 1971--April 2, 1972	.00446
April 3, 1972--August 31, 1972	.00445
September 1, 1972--August 12, 1973	.00478
August 13, 1973--March 9, 1974	.00511
March 10, 1974--July 19, 1974	.00544
July 20, 1974--August 31, 1975	.00587
September 1, 1975--June 11, 1976	.00616

Time Period	Amount of Hauling Allowance per Gallon
June 12, 1976--August 31, 1976	.00644
September 1, 1976--July 8, 1977	.0067
July 9, 1977--April 14, 1978	.00714
April 15, 1978--June, 1979	.00724

15. The following were the approximate differences between the contract prices of Compier Company and Texaco's Retailer Tankwagon price (exclusive of general allowances in effect during the period January to December, 1972):

Time Period	Amount of Price Differences per Gallon Sky	Fire	Non-Lead
January 2, 1972 - May 22, 1973	*.0395	*.0395	
May 22, 1973 - July 31,1974	*.0365	*.0365	
August 1, 1974 - December 2, 1975	*.0395	*.0395	
December 3, 1975 - January 28, 1977	.0365	.0365	.0385
January 28, 1977 - June 1979	.0265	.0265	.0285

* All include .003 special allowance. None of these figures reflect the .01 allowance to Allen, Rigg and Weber.

16. The following were the approximate differences between the prices paid by Gull and Texaco's Retail Tankwagon price:

Time Period	Amount of Price Differences per Gallon		
	Sky	Fire	Nonlead
January, 1973 - June 12, 1974	.0525	*.0575	--
June 13, 1974 - July 9, 1974	.0525	*.0575	.0575
July 10, 1974 - June 9, 1977	.0525	.0575	.0545
June 10, 1977 - July 18, 1979	*	*	*

* Gull prices charged to discount off DTW (Distribution Tank Wagon) as follows: Sky: .0298; Fire: .0173; Non-Lead: .0173. The discount off of RTW based on new policy for Gull as follows: Sky: .0593; Fire: .0438; and Non-Lead: .0458.

17. During the relevant time period Dompier Oil Co. supplied the following service stations with Texaco-branded gasoline:

<u>Location</u>

North 502 Freya

North 3306 Monroe

Mission & Magnolia

North 2924 Market

East 303 Third Avenue

Hayford Road & Highway 2,
Airway Heights

North 2527 Division
(Red Carpet No. 1)

East 7208 Sprague Avenue
(Red Carpet No. 2)

East 303 Third Avenue

Newport Highway

North 7902 Division

18. During the relevant time period Gull supplied the following service stations with gasoline:

Location

East 620 Francis

Newport Hwy., Mead

East 13819 Trent

East 511 Francis

North 2103 Division

East 5204 Sprague

North 1521 Argonne

South 2805 Grand

East 8006 Sprague

East 4422 Sprague

South 3728 Grand

East 936 Sprague

1106 North Pines Road

East 706 Main Street, Cheney

Route 1, Medical Lake

19. As of June, 1979, all Gull stations in Spokane were operated by individuals who were paid a commission by Gull for each gallon of gasoline sold through the station.

20. During the relevant time period, Gull was solely responsible for establishing the retail price at which gasoline was sold to the public at its commission stations.

21. Throughout the relevant time period, Gull had no bulk plant in the Spokane area.

22. During the relevant time period, Texaco granted a one cent allowance to A. Allen, H. Rigg and R. Webber.

23. Texaco agrees that the differences in appearance or operation of the plaintiffs' service stations and the Texaco branded retail service stations supplied by John Dompier Oil Company are not the basis for its claim that the stations were not operating on the same functional level.

INSTRUCTION NO. 11

I will now instruct you on the law relative to the plaintiffs' claims under the Robinson-Patman Act. Section 2(a) of the Robinson-Patman Act provides that:

> It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption or resale within the United States . . . , and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy or prevent competition with

> any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them . . . .

Section 2(b) of the Robinson-Patman Act provides that:

> Upon proof being made . . . that there has been discrimination in price . . . , the burden of rebutting the prima facie case thus made by showing justification shall be upon [the seller] . . . .

The seller may rebut a prima facie case:

> . . . by showing that his lower price . . . to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by the competitor.

INSTRUCTION NO. 12

In order to recover damages for price discrimination by Texaco, a plaintiff must have proved by a preponderance of the evidence the following elements:

1. That Texaco made a contemporaneous sale of gasoline to the plaintiff and John Dompier Oil Company or Gull Oil Company -- that is, Texaco made a sale to that plaintiff and Dompier or Gull at or about the same time;

2. That Texaco sold gasoline to Dompier Oil Company or to Gull Oil Company at a lower price than was charged to the plaintiff;

3. That the product purchased by the plaintiff and the favored purchaser was of like grade and quality -- that is, of the same type (e.g., regular and regular, premium and premium);

4. That the effect of the discrimination produced a reasonable likelihood of substantially lessening competition in the sale of gasoline or to injure, destroy or prevent competition by the plaintiff with Dompier Oil Company or Gull Oil Company or with a customer of Dompier Oil Company, Gull Oil Company, or the plaintiffs.

5. That at the time it was charged the lower price, the competitor of the plaintiff was in substantial competition with the plaintiff;

6. That the plaintiff was injured in his property or business by reason of such discrimination; and

7. That the injury resulted in damage to that plaintiff in an amount which can be estimated and determined with reasonable probability, supported by reasonable data.

In this case, as in all civil cases, the plaintiff must prove each essential element by a preponderance of the evidence. If the plaintiff has proved each essential element by a preponderance of the evidence, there is sufficient evidence to support a verdict in favor of the plaintiff, and your verdict should be for that plaintiff unless Texaco has established by a preponderance of the evidence its affirmative defense of meeting competition, in which event your verdict should be for Texaco as to that plaintiff.

INSTRUCTION NO. 15

I have told you before that plaintiffs have the burden of proving their case. If they do so, then you must consider Texaco's so-called "Affirmative Defense." An affirmative defense is one which presents a legal justification for an action. Texaco has

the burden of proving any such defense it asserts by a preponderance of the evidence.

Texaco has pleaded as an affirmative defense that it was "meeting competition." This affirmative defense seeks to invoke the following provision of the Robinson-Patman Act:

> Upon proof being made on a complaint under the Act, that there has been discrimination in price, the burden of rebutting the prima facie case thus made by showing justification thereof, shall be upon the person charged with a violation of this section, by affirmatively showing that his lower price to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor.

Under this defense, Texaco contends that even if it extended to Dompier Oil

Company and Gull Oil Company lower prices on gasoline than it charged to each plaintiff, Texaco believed in good faith that the lower price was extended by Texaco to meet an equally low or still lower price offered to Dompier Oil Company or Gull Oil Company by one or more of Texaco's competitors.

Texaco has the burden of proving by a preponderance of the evidence that at the time it made an alleged discriminatory sale it in good faith believed that the lower price was necessary to meet competition for the buyer's business.

I will not instruct you on the facts and conditions which must be proven by Texaco by a preponderance of the evidence to establish the defense of meeting competition.

First, the good faith requirement of the law requires a seller to prove the existence of facts which would lead a

reasonable and prudent person to believe that the granting of a lower price was in fact necessary to meet the equally low price of a competing seller.

Second, a price discrimination based on meeting a lower competitive offer, even if valid, cannot be continued indefinitely based on the lower offer. The meeting competition defense exists only so long as the seller in good faith believes the lower competing price can reasonably be said to be available.

Third, lower price to one customer cannot be justified solely by virtue of its being part of the seller's normal pricing system.

The burden of proving this affirmative defense is upon Texaco. If Texaco has not proved all elements of its defense by a preponderance of the evidence, the defense must fail, just as plaintiff's claim under the Robinson-

Patman Act must fail if you find that plaintiffs have not proved all the elements of their case by a preponderance of the evidence.

INSTRUCTION NO. 16

A price discrimination within the meaning of Section 2(a) of the Robinson-Patman Act is a price difference; that is, a difference in prices charged to different customers. It means selling the same goods cheaper to one purchaser than another. The claimed price difference in this case is claimed by plaintiffs to result from Texaco's alleged sale of gasoline to the Dompier Oil Company and Gull Oil Company at prices lower than those charged plaintiffs and which price differences plaintiffs claim were passed through to Dompier Oil Company's customers.

With respect to each sale transaction in which a plaintiff claims that

Texaco unlawfully discriminated in price against a plaintiff in favor of Dompier and/or Gull, that plaintiff must prove that there was a specific difference between the price per gallon that it paid to Texaco for gasoline and the price Dompier and/or Gull paid to Texaco for the same type of gasoline at the same time.

To determine whether such a price difference exists, you should compare the price per gallon paid by that plaintiff with the price paid by Dompier and/or Gull for the same type of gasoline at or near the same time.

INSTRUCTION NO. 16A

There is evidence that Gull Oil Company, after it purchased regular and premium gasoline from Texaco, blended some regular and premium gasoline together at the station location and sold the blended product to the public.

You may consider this factor in evaluating whether and to what extent Gull sold the same product as the plaintiffs in the determination of the issue as to whether there was substantial competition between the plaintiffs and the Gull stations.

If you determine that the blend was not substantially the same product as either regular or premium gasoline, you should not take into account any sales of blend by Gull Oil Company in your determination of any issues in this matter.

INSTRUCTION NO. 17

In further regard to this definition of price discrimination, it is not enough simply that there be this discrimination or difference in price, as I have defined it. The discrimination must also be between two reasonably contemporaneous sales of the same grade

of gasoline. It is not essential that sales used for such comparison occur during the same day, week, or month. The law provides no arbitrary time limit. You may compare prices charged by the defendant during any period between the two cut-off dates for which damages are allowable in which there has been no advance or reduction in Texaco's prices. For example, one price now and a different one two months ago would likely not be comparable. One now and one last week would likely be comparable. This does not mean that the sales must have occurred on the same day or even in the same week, for you to draw this comparison, but you must find them occurring within a period of similar market conditions because a time difference might mean that different prices were caused by different market conditions rather than discriminatory

practices. As with all other issues, you alone are to make the decision on what is comparable and what is not. You are not to take my illustration as binding on you; you are the sole judges of the facts, and of what is a comparable sale.

INSTRUCTION NO. 18

There is one final point which is important in deciding whether a price discrimination which is proven may have had the necessary effect on competition. Where a seller such as Texaco extends a lower price to a buyer who resells at wholesale, there may be a price discrimination if a portion of the lower price was passed on to service station customers and that Texaco before the sale was made, knew that a portion of the difference would be passed on to the customers, and you find that the disfavored buyer was harmed

competitively by reason of the fact that a portion of the difference was passed on.

INSTRUCTION NO. 19

During the course of the trial, there have been references to certain federal statutes and regulations relating to gasoline prices and supply allocations which were in effect during part of the period of time for which the plaintiffs seek damages. This evidence has been admitted for the purpose of defining conditions which existed in the market, and you are to consider them only for this purpose. I instruct you that these statutes and regulations did not require Texaco to maintain the price difference between plaintiffs, Dompier and Gull, and did not and do not afford Texaco immunity from the Robinson-Patman Act.

INSTRUCTION NO. 20

You are instructed that if a plaintiff has proved by a preponderance of the evidence that Texaco discriminated in price in the sale of gasoline between different purchasers who were in competition with each other and that the price differential was substantial, and applied to a substantial quantity of gasoline over a substantial period of time, you may, but are not required to, infer from such facts that such price differential may have had the necessary adverse effect on competition. You are the judge of the facts and you are free to draw such inferences from the evidence before you in this case which you find from the evidence are justified.

In determining whether the price discrimination may have a substantial adverse effect on competition you may consider the following factors: the

amount and duration of the price discrimination; the identity and size of the favored purchaser; the amount of competition between him and the plaintiff; whether that competition is significant in relation to the plaintiff's competition with persons handling other brands of gasoline; and evidence of whether it was Texaco's price discrimination -- and not some other factor -- which may have caused a significant impact on competition involving the stations in substantial competition with the plaintiff, including non-Texaco stations.

With respect to Gull which purchased unbranded gasoline while the plaintiffs purchased branded gasoline, you may consider whether a lower price to Gull reflected the retail price differential and whether that price differential only measures the economic value (or consumer preference) of branded gasoline as

compared to unbranded gasoline without having a substantial adverse effect on competition.

INSTRUCTION NO. 21

As the fourth element of price discrimination, you must find that the effect of price discrimination may be substantially to lessen competition, or to injure, destroy, or prevent competition. In establishing this element, the plaintiffs are not required to establish that the discriminations in price between the plaintiffs and other purchasers in fact substantially lessened competition or in fact injured competition. It is sufficient if the plaintiffs establish by a preponderance of the evidence that the effect of the discrimination in price, if any there be, had the reasonable probability of substantially lessening competition, or

of injuring or destroying or preventing competition.

INSTRUCTION NO. 22

You are instructed that the allowance extended to certain plaintiffs for station ownership by those plaintiffs is part of the terms of the sale of gasoline and should be taken into account in determining the net buying price.

INSTRUCTION NO. 23

As to the fifth element of price discrimination, each plaintiff must show that there was substantial as opposed to minimal, competition between the plaintiff and the favored purchaser receiving a lower price at the time the lower price was received. Price discrimination between parties not in substantial competition cannot have a substantial adverse effect on competition.

In determining whether there was substantial competition between a

plaintiff and Dompier or Dompier's service station customers, or between a plaintiff and Gull, you may consider whether the plaintiff and Dompier or Dompier's retail customers, or the plaintiff and Gull were each trying to sell identical customers (i.e., were competing for the same dollar) and whether the prices charged Dompier or Dompier's service station customers or by Gull were likely to attract customers that otherwise would have purchased from that plaintiff. In determining whether that plaintiff has proven substantial competition you may consider the distance between retail service stations, traffic flow, the road patterns, the nature of the geographic area, and the extent to which the plaintiff has established that its customers were likely to buy from

Dompier or Dompier's service station customers or from Gull stations.

INSTRUCTION NO. 23(A)

In order for a non-favored and favored purchaser (or its customer) to be in competition with each other, the non-favored and the favored purchaser (or its customer) must be on the same functional level (retailer-retailer, or wholesaler-wholesaler).

You the jury, as the sole judges of the fact must determine whether Dompier and/or Gull (or their customers) were on the same functional level as the plaintiffs.

INSTRUCTION NO. 24

Each plaintiff must prove the <u>fact</u> of his injury, but not necessarily the amount thereof, resulting from the alleged violation with reasonable certainty. The plaintiff's injury must be substantially attributable to a parti

cular lower price granted by Texaco to Dompier or to Gull.

INSTRUCTION NO. 25

A plaintiff is required to establish with reasonable probability the existence of a causal connection between the discriminatory price and some damage to him. This element of proof is called the fact of damage. The fact of damage, like any other fact, may be proved by direct evidence, or by circumstantial evidence, or both. The plaintiffs are not confined to proof of one particular kind of injury, but may prove all types of economic damage actually resulting from the alleged discriminatory price to establish the fact of injury.

INSTRUCTION NO. 26

There is evidence that Texaco granted John Dompier Oil Company a hauling allowance. You are instructed that the hauling allowance may not be

taken into account in determining the amount of the price difference, if any, which you may find existed.

INSTRUCTION NO. 27

If you determine that Texaco has unlawfully discriminated in prices to the plaintiffs, you must then determine whether Texaco's discrimination was a proximate cause of injury to the plaintiffs' business or property.

An injury or damage is proximately caused by an act whenever if appears from the evidence in the case:

1. That the act played a substantial part in bringing about or actually causing the injury or damage; and

2. The injury or damage was either a direct result or a reasonably probable consequence of the act.

This does not mean that the law recognizes only one proximate cause of an injury or damage, consisting of only

one factor or thing, or of the conduct of only one person or entity. On the contrary, many factors or things, or the conduct of two or more persons, may operate at the same time, either independently or together, to cause injury or damage; and in such a case, each may be a proximate cause of injury or damage.

INSTRUCTION NO. 28

If a plaintiff proves the essential elements of his or her claim including the fact of damage by reason of Texaco's unlawful price discrimination, and Texaco has not established its affirmative defense of meeting competition, it will then be your duty to return a verdict in favor of that plaintiff and to determine the amount of damages that will reasonably and fairly compensate that plaintiff. The fact that the precise amount of a plaintiff's damages may

be difficult to ascertain should not affect recovery.

On the other hand, a plaintiff is not to be awarded purely speculative damages. While you may award damages that constitute a just and reasonable estimate of an amount on the basis of evidence, you may not award damages which rest on mere conjecture, supposition or speculation. However, it is not necessary to prove the amount of damages with precise mathematical accuracy. You are permitted to determine the amount of damages by estimate or approximation provided, of course, a reasonable basis for the estimate or approximately is shown by the evidence and the evidence reasonably establishes the probable amount of damage actually sustained.

You are not bound to reject a formula or a theory for determining damages simply because it does not

measure damages to the exact dollar and cent, and you may use any formula or theory you consider reasonable provided, however, that it must be based entirely on the evidence in the case and the law stated by the court. However, you may not determine a plaintiff's damages, if any, merely by determining the price difference between favored and disfavored buyers and multiplying that figure by the number of gallons involved, since, as I have instructed you, the measure of damage is that proximately caused by the price discrimination.

INSTRUCTION NO. 29

As I have said, if you find for a plaintiff in accordance with these instructions, it then becomes your responsibility to determine the actual damages which that plaintiff has suffered by reason of the violations of the

antitrust laws. If you find for plaintiffs, your concern is only with determining the damages separately for each plaintiff. You are not to concern yourself with the judgment to be entered by the court in the case.

INSTRUCTION NO. 30

The fact that the court has instructed you as to the proper measure of damages should not be considered as intimating any view as to which party is entitled to prevail in this case. Instructions as to the measure of damages are given for your guidance only in the event you find from the evidence in favor of the plaintiff.

INSTRUCTION NO. 31

Although twelve plaintiffs have joined together to present this case, you must consider the case of each plaintiff individually. Each plaintiff must separately establish his or her

individual right to a verdict in his or her favor.

HASBROUCK V. TEXACO
EXHIBITS
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
NO. C-76-27

PLAINTIFFS'

EXHIBIT 1

March 5, 1976

Mr. Gorman C. Smith
Assistant Administrator
Office of Regulatory Programs
Federal Energy Administration
2000 M Street, N.W.
Washington, D. C. 20508

Dear Sir

On February 27th, I met with Douglas G. Robinson, Deputy General Counsel, and other FEA representatives to discuss in some detail certain trends which have arisen in our marketing of gasoline over the last several years. Mr. Robinson suggested that I reduce to writing the points we discussed and submit them to you for your information and consideration.

Over the last several years, the volume of gasoline we sell to Texaco

distributors has increased at a dramatic rate, while the volume sold to directly supplied retailers has suffered an equally dramatic decrease. For example, several Texaco distributors showed an increase of over 300% in gasoline purchases in 1975 as compared to 1972. In fact, in just one year, the average increase in the volume purchased by 28 of Texaco's largest distributors was 32% and the average increase for all distributors was over 13%. During the same period, the volume of gasoline sold to independent retailers decreased approximately 10%. This decrease was more than offset by the increase in purchases by distributors. In fact, since 1972, Texaco has experienced a 16% increase in our total adjusted base period volumes for all classes of trade.

These trends create a severe problem for us and Texaco retailers. The

economic viability of many thousands of independent retailers has been severely strained by this decrease in their gasoline sales. Moreover, Texaco is a net purchaser of gasoline and it is becoming uneconomical for us to continue to provide unlimited supplies of gasoline to all our customers.

We believe this problem can be traced to two basic factors: (1) the relative price levels to our various classes of purchasers and (2) the practice of many distributors to accept from us a hauling allowance for gasoline which is not in fact delivered to their bulk plant. While these problems may not be unique to Texaco, their impact upon Texaco is especially severe. We market not only directly to independent Texaco retailers, but also to distributors. Unlike some companies, Texaco distributors are not located in only

those geographic areas in which we do not directly supply service stations. Rather, in many areas of the country, especially urban, we sell our branded gasoline both to independent retailers and independent distributors who, in turn, resell to independent retailers. As a result, there is considerable "intra-brand" competition in Texaco gasoline.

For many years, we have sold gasoline to distributors at a discount of approximately 3 1/2¢ per gallon from the price charged our independent retailers. This discount was traditionally justified by the many important services distributors performed when they physically "distributed" this gasoline among many customers, most of whom required small volume deliveries. These traditional functions continue to be performed by most of our distributors

operating in rural areas, who serve various farm and other small volume accounts including service stations. Accordingly, their existing margin is appropriate on both a competitive and functional basis. On the other hand urban distributors have significantly changed their methods of operation over the past few years, particularly since the advent of the gasoline shortage several years ago. These distributors are shedding many of their traditional functions and have concentrated their sales in very high volume outlets. This has reduced their per gallon overhead cost to the point where a good portion of the discount is not being utilized to defray their costs of distribution at all.

In addition to this traditional discount, many of these distributors have been obtaining added savings

through the manipulation of their hauling allowance. Because our prices to distributors have traditionally been delivered prices, we are obligated to "haul" gasoline to their bulk storage facilities. Some of our large distributors own their own trucks. In those cases, they could obtain a per gallon hauling allowance based upon the ICC rate for the distance between our terminal and their bulk plant. Increasingly, however, distributors are accepting delivery at our terminal and collecting the full hauling allowance but are not taking the gasoline to their storage facility. Rather, they are transporting it only a small fraction of that distance, and delivering it direct to a retail outlet. While the amount of the hauling allowance varies with the distance to the distributor's bulk plant from our terminal facility, hauling

allowances can reach several cents per gallon. This amount can provide a significant marketing advantage to a distributor when he is not, in fact, incurring the cost of hauling the gasoline to his bulk facility.

We believe that the dramatic shift in gasoline sales from the independent retailer classes of purchaser to the independent distributor classes of purchaser can be explained almost entirely by the magnitude of the distributor discount and the hauling allowance. We believe that they are inconsistent with the realities of gasoline marketing today.

Very truly yours,
J. W. Kinnear

JWK:llw
cc: Mr. Douglas G. Robinson
bcc: WMF
FIB

PLAINTIFFS'

EXHIBIT 2

T E X A C O

New York, N. Y., March 8, 1976

REGIONAL MANAGERS MEETING
MARCH 2 AND 3, 1976
DISTRIBUTOR VOLUME SITUATION
2.03

MEMORANDUM TO THE FILE

On March 2nd and 3rd a Regional Managers Meeting was held with the Executive Staff to discuss the very serious problem of rampant and alarming increases in distributor gasoline volume.

It was made clear that our main concern is with the profitability aspects of this trend, our ability to continue to supply this kind of volume, and the sales imbalance that is developing among the various classes of trade.

To emphasize the seriousness and concern of this matter, the following distributor gasoline volume data was presented.

ADJUSTED BASE GASOLINE VOLUME DATA

Class of Trade	1972 Vol. (Bbls.)	Adjusted Base 1975 Vol. (Bbls.)	% Increase
Distributor	52,756,000	70,658,000	34%
C.O./3rd Pty	77,271,000	79,566,000	3%
Other Resale	43,933,000	49,900,000	13.4%

Note: Total Adjusted Base for Marketing-U.S. is 16% over 1972 average for all classes of trade.

1975 ACTUAL PURCHASES

	1975 Volume (Bbls.)	% of Adjusted Base
Distributor	67,023,000	96.3%
C.O./3rd Pty	68,835,000	80.2%
Other Resale	45,286,000	90.6%

Note: Distributor class of trade gasoline volume has increased 27% 1975 versus 1972.

PHASE I

A. The attached legally approved letter, which explains our concern over this matter, is to be mailed to all distributors by Division Managers. The program is to be personally discussed immediately with Division Managers by Regional Managers and the letter mailed to all distributors, personally signed by the Division Managers, no later than March 8, 1976.

B. Regional Managers are to make personal calls on selected distributors which are considered to be the worst offenders of the program.

PHASE II

A. Expedite implementation of the new wholesale franchise agreement with a minimum-maximum clause and providing for a 5-year agreement. It was the consensus that a 5-year agreement was

desirable because of the following reasons:

1. A continued, stable source of supply is uppermost in the minds of our distributors, particularly in the event of allocation and price decontrol.

2. The 5-year agreement would allow the distributor and Texaco to plan their long-range marketing strategy and protect pay-out on investments.

3. The extended term agreement would promote the acceptance of the minimum-maximum provision.

B. It was further agreed that the 5-year agreement would not be offered to those distributors which we have formally cancelled but continue to supply under directive of the FEA, nor would it be offered to those distributors who have a current S-141 agreement and whose business relationship we do not wish to continue in the future. The new

agreement will be offered to all other distributors immediately, and it was the consensus that approximately 80% would execute mutual cancellations of their present S-141 contracts and sign the new agreements.

PHASE III

There followed an extensive discussion on the merits and necessity of increasing distributor prices in the event Phase I and Phase II above were not successful in stemming the large volume purchases of distributors. It was agreed we should increase distributor prices, if necessary, within the next 4 to 5 months, as follows:

1. Except for the Los Angeles Basin and certain markets in the Western Region, increase distributor prices nationwide by $.005 per gallon, which will reduce distributor margin to $.0325.

2. In the Los Angeles Basin, increase distributor prices by $.004 per gallon, which will reduce their margin to $.030 and with the TVA of $.0025 will place their margin at $0.325, equal to all other distributors.

There followed a discussion on consignee conversions and the merits of eliminating the consignee class of trade entirely and having only a distributor class of trade. It was the consensus that an adequately formulated plan to accomplish this objective could take approximately three years and that the plan must be structured to provide provisions for financing and a consolidation program, because of the following reasons:

1. Some consignees are very poor businessmen and will need some kind of assistance in the conversion.

2. Small volume consignees could not remain consignees and survive in the marketplace in competition with distributors.

3. Some consignees do not have the financial wherewithal to assume the liability of converting to distributors.

4. Some consignees will be reluctant to convert for several reasons, and we cannot force the conversion due to present FEA regulations.

* * * consignees who have been with Texaco for many years * * * simply will not be willing to assume the * * * responsibility of converting to distributor.

* * * on the above, it was the consensus that we * * * the consignee class of trade, and Mr. D. A. * * * Mr. T. B. Meadows to investigate and iden- * * * considerations necessary to

expedite consignee * * * on a high priority basis, which will include a * * * consolidation and financing.

* * * D. A. Doherty also suggested that we should * * * structuring and redefining of our entire wholesale * * * system in the long range.

/B. W. Castleberry

B. W. CASTLEBERRY

Staff

Managers

(Individually Addressed to Distributors)

Texaco Distributors have traditionally played an important role in our Company's distribution system; however, because many Texaco Distributors have dramatically increased their volume of sales over the past several years, and particularly over the past several months, we are concerned about our ability to supply this large volume of product and we are concerned about

whether these Texaco wholesalers are supporting these sales with the type of wholesaler services that further the general acceptance of the Texaco brand.

During each month that we have supplied an unlimited allocation of product, we have advised you that such unlimited quantities were only being made available for that particular month. We wish to make it clear to you again so that you are not misled into taking on or keeping present volumes on the erroneous assumption that we will necessarily meet those needs in the future.

If you have any questions regarding this matter, we will be happy to discuss it further with you.

(Division Manager)

PLAINTIFFS'

EXHIBIT 11

T E X A C O

Portland, Oregon, February 22, 1972

1972 WHOLESALE MARKETING PLAN

DISTRICT SALES MANAGERS

PORTLAND REGION

In order to insure achievement of all 1972 objectives, including Wholesale Product Sales (see attached), we must:

1. Acquire new business.
2. Improve Sales through existing wholesalers.

The plans and programs listed below will enable us to equal or exceed these objectives.

1. G.R.O.W. (Generate Results - Obtain Wholesalers)

The program is designed to determine where new wholesale distribution is desired, then solicit and secure the Wholesaler. The continuation of the

GROW program will help to improve our share of market in rural areas and assure representation where presently we have none.

2. FILL THE GAP PROGRAM

Wholesalers will be encouraged and motivated, through the District, to select and develop prime sites, thereby improving retail representation; volume and profit. Instructions have previously been issued.

3. M.A.P.F.P. - Market Analysis Plan for Progress

Analyze or update each Wholesaler area on or before June 30, 1972.

After completion, the Supervisor and District Manager will be better able to establish realistic projects all classes of trade, including plans to achieve them and make recommendations for:

1. New Investment Service Stations
2. Rehabilitation

3. Solicitation and Retail, Consumer and Farm accounts.
4. Evaluate and Rate Wholesaler.
5. Continuing present method of Wholesale operation.
6. Consolidation with adjacent Wholesaler.
7. Conversion to Salary.

4. WHOLESALER SUPERVISED THRUPUT

Present program is to continue with Consignee recording sales volume each investment account immediately after the last day of the month, thereby bringing to his attention the need for corrective action, if that be the case.

5. CO-OP ADVERTISING

Districts have been given budgets in the amounts requested.

6. WHOLESALER G.L.I.T.T.E.R.

Continued emphasis will be placed on upgrading our Wholesalers' image and operations, including grounds, lines,

inventory, tanks, trucks, employes and retail service stations.

a. BULK PLANTS

Prior to April 1, 1972, bulk plant facilities are to be carefully inspected by the District Sales Supervisor, who will be required to complete Section 5, pages 4 and 5, Form S-283, submitting one copy to Assistant Regional Manager, Wholesale.

Necessary repairs and painting are to be scheduled, budget permitting.

Districts will continue to be motivated to maintain neat and clean offices, well arranged warehouses and weed-free yards.

b. ROLLING EQUIPMENT

Renewed emphasis will be placed on present program to establish desired prestige standards.

Painting and proper identification, all Wholesaler trucks, will be accelerated, with June 30, 1972, the target date for completion.

b. Rolling Equipment (Contd)

Colored photos, side and rear views, are to be forwarded within 30 days after completion of painting and identification.

Rolling equipment is to project the Sparkle image at all times.

c. RETAIL SERVICE STATIONS

"The Tiffany Image" is desired at all Wholesaler served and supervised service stations.

The Sales Supervisor is to make a thorough inspection at each unit prior to May 1, 1972, utilizing the S-396R, submitting a copy of the report to Assistant Regional Manager, Wholesale.

The Wholesaler and his employes are to be encouraged to prepare S-396C during each visit to retail accounts.

Special emphasis is to be placed on clean and well equipped rest rooms.

7. ELIMINATE PAST DUE RECEIVABLES

Close liason with the Credit Department will be maintained and necessary attention to problem accounts will be given during field visits.

8. WHOLESALER RELATIONS

Improve Wholesaler profitability and relations through better understanding and communications.

Wholesalers are to be offered a two-day seminar on Management and Merchandising. Also, the conference Professional Selling Techniques, will be scheduled during 1972.

The training program will result in improved sales, accounting and management practices, and will help to eliminate unexplained and excessive shortages and unsatisfactory audits.

8. Wholesaler Relations (Contd)

Districts will continue periodic Wholesaler meetings to provide continued good communications, understanding and stimulus, and we in Wholesale will spend more time in the field assisting District personnel.

For your ready reference we are attaching a list of Wholesalers, indicating gasoline sales for 1971 versus 1970, together with 1971 monthly average gasoline gallonage for each Wholesaler.

Shortly, we will mail to you for distribution to your Supervisors, Wholesaler Data Sheets, covering gasoline, middle distillates, auto oils, industrial oils and grease. The form is

designed so a monthly sales comparison, current year versus previous year, can easily be made. Other pertinent data also will be included. Sales figures for 1970 and 1971 have been posted. Upon receipt, the data sheets for the current year should be posted on a monthly basis, thereby alerting the Supervisor where his help and guidance is needed.

We are vitally interested in Wholesaler progress, and are determined to help in every way possible, so we will be reviewing your Wholesaler Data Sheets on every visit. Please keep them current.

We are confident the above plans and programs, coupled with your desire to excel, will result in an outstanding 1972 Wholesale sales year.

/O. W. Miller
O. W. MILLER

CHK:rdm
DAS (LA)
JLA (NY)
CAR
JMS
ASST. DIST. MANAGERS
Attach.

PLAINTIFFS'

EXHIBIT 12

T E X A C O

Portland, Oregon, January 4, 1972

<u>1972 WHOLESALE OBJECTIVES</u>

7.44

Messrs:
L. W. Lefler - Anchorage
J. K. Sullivan - Boise
T. L. Carey - Spokane
R. W. Daniels - Medford
C. B. Barningham - Butte
D. G. Wallace - Portland
J. E. Tomlin - Seattle

Here are your District objectives for 1972. Please place the necessary emphasis on them in order that these objectives are attained at the earliest possible date.

1. Exceed all Sales Department product goals.
2. Each District to secure one <u>good representative</u> new Wholesaler.
3. Analyze or up-date each Wholesaler Market Analysis by June 30, 1972.

4. Secure new Fill The Gap service stations.

Alaska - 1	Butte - 3
Boise - 3	Portland - 2
Spokane - 3	Seattle - 2
Medford - 2	

5. Rehabilitate and modernize all obsolete service stations.
6. Properly paint and identify all truck equipment.
7. Eliminate all past due receivables.
8. Improve Consignee audits to a point where they are 100 percent satisfactory.
9. Utilize mutual understanding approach with Wholesalers.

I am confident you will agree the objectives are reasonable and that we can depend upon you to stimulate all concerned to get the job done.

/C. A. Reisdorf
C. A. REISDORF

OWM:rdm
DAS (LA)
JLA

PLAINTIFFS'

EXHIBIT 14

TEXACORG PTL

LAST

[Spokane Dist. #3 Stamp
dated SEP 1972]

TEXACO SPK

[Pls list the location of
every station Dompier
has requested assistance
on during 1972.]

TJC

T L CAREY

9-15-72

ON AUG 29, 1972, I REQUESTED YOU & L T BOLLINGER VISIT EACH RETAIL ACCOUNT DOMPIER SERVES AS REFLECTED ON FORMS S-21 (DM).

MAY WE HAVE YOUR REPLY CONCERNING INVESTIGATION WITHOUT FURTHER DELAY.

[Address]

1. E. 303 - 3rd Avenue [okay]
2. N. 3302 Monroe [okay]

O W MILLER 3. N. 7902 Division [okay]

4. Route 1, Mead [okay]
5. R & E. Inc., Route #4, Spokane [okay]

TEXACORG PTL

6. N. 2725 Division [okay]
7. E. 7802 Sprague [okay]
8. N. 930 Division [okay]
9. N. 2924 Market [okay]
10. Wall & Rowan [(?)]

[Verified 9-19-72

T. L. Carey]

T E X A C O

Spokane September 19, 1972

DISTRIBUTOR ACCOUNTS

JOHN DOMPIER OIL CO.

7.41-5

4.21-2

Mr. O. W. Miller

Portland

On September 19, 1972, I personally verified each account served by Dompier Oil Company as reflected on their Forms S-21(DM).

All their stations are identified as Texaco outlets. All pumps are painted and identified as dispensing either Fire Chief or Sky Chief gasoline.

/T. L. Carey
T. L. CAREY

TLC:rlo'c

PLAINTIFFS'

EXHIBIT 23

T E X A C O

Portland, Oregon April 24, 1972

WHOLESALER RELATIONS

7.31

PORTLAND REGION

DISTRICT SALES MANAGERS

DISTRICT SALES SUPERVISORS

The following is being furnished to you and your people to help improve sales performance and increase the efficiency and effectiveness of all those handling wholesale business.

While this letter has been directed to all District personnel handling wholesalers, the guide lines are especially important to the new Sales Supervisors and therefore, we ask that he quickly become acquainted with the contents, including all agreements, modifications and circular letters.

Each supervisor should secure sample copies of contracts or agreements applicable to Consignees, Distributors, Peddlers and Tank Truck Dealers. These contracts and agreements together with all modifications and/or amendments should be studied thoroughly, so that a complete understanding of the responsibilities and obligations of the parties involved is obtained.

As an example, we list the following contracts and/or agreements:

CONSIGNEES:

Forms S-82 Consignment Agreement

Forms S-82A Schedule A.

Forms S-141E Distributor Agreement
(covering Consignees who are distributors on Middle Distillates)

Also, all modifications or amendments to the above, such as:

S-368 - Agreement

S-368B - Direct Delivery

S-368C - Higher Commissions

S-368D - Reduced Commissions

S-368E - Rental Authorization

S-368F - T/C, T&T, or C/L

S-368G - Drayage

S-368H - Farm & Consumer Modification

TANK TRUCK DEALERS

Form S-83 - Tank Truck Dealer Agreement (also, modifications or amendments thereto).

Form S-207 - Agreement of Sale (covering Tank Truck Dealers who are Distributors on Middle Distillates.)

DISTRIBUTORS:

Form S-141 - Distributor Agreement

PEDDLERS:

Form S-207 - Agreement of Sale

You should also secure copies of the following Circular Letters which must be studied in order to gain complete understanding of the Company's policy effecting the various Wholesalers listed above:

146	261H	265	269A	292A	296C
164	262C	266	270	293	709B
169	263B	267B	275	294	816B
260D	264A	268A	290A	295A	

While other circulars affect our dealings with Wholesalers, the above listed ones are most important.

Each supervisor should have a neat, adequate briefcase with individual files set up for each Wholesaler along with a general file covering current programs and matters of general nature.

It is extremely important that route sheets be prepared and forwarded to Wholesalers at least one week in advance of scheduled calls so that the

Wholesaler may schedule his undivided time with the Supervisor during each visit.

Prior to actual call, prepare an outline of your work plans and exactly what is to be accomplished on this call. Arrival at the bulk plant should be punctual, at least 15 minutes prior to opening hours. You should immediately let the Wholesaler know you will spend the full day with him.

Review sales results to date as reflected by Forms S-222 and get an expression of Wholesaler attitude on sales plans and future results.

Remember, we must always sell and encourage our Wholesalers to handle the complete line including TBA, Quality Line and Green Chief.

At this time, you should cover all detail matters and current programs from the personal and general briefcase

files. Establish completion dates on any items requiring action.

Review Forms S-548, (all BSLA) S-229, and S-210, gauge storage tanks and cut off Forms S-184. Investigate excessive net 60° shortages and take corrective action.

All of the above matters should be covered quickly and with definite decisions made of current matters.

A thorough inspection of the physical condition of the bulk plant and all facilities should be made, such as housekeeping, truck painting and identification, employee appearance and uniforms, with notes made of any items requiring maintenance or repairs.

Remember, it is vitally important that you spend as much time as possible in the field with the Wholesaler. Accordingly, the above should not exceed approximately two hours.

With the Wholesaler, you should now spend the remainder of the day determining his plans for expanding sales volume through the acquisition and/or conversion of competitive resellers and consumers. You should investigate the possibility of retail service station development through first-party leasses, assisting the Wholesaler in selecting desirable sites.

It is extremely important for supervisors to determine prospective competitive accounts which the Wholesaler is presently soliciting. He should render any possible assistance by accompanying the Wholesaler on actual sales calls, assisting in the solicitation.

Each Retailer and large consumer account presently handling Texaco products should be visited with the Wholesaler in order to assist him in

further sales solicitation and merchandising activities.

Overnight stays in Wholesaler areas at reasonable intervals should be scheduled in order to determine service station hours, lighting and night operations.

Of vital importance is the necessity for our supervisors to become acquainted with competitive wholesalers and large, successful Retailers in each wholesale area. They should also become acquainted with local businessmen in order to keep abrest of local situations and to develop a prospective list of Retailer and Wholesaler replacements.

Last but certainly not least, decisions should be made on the spot if at all possible, covering any matters brought to the supervisor's attention by the Wholesaler. If this is not within the supervisor's authority, matters

should be expedited promptly upon his return to the office and the Wholesaler advised without delay.

We do not intend to convey the impression that the above outline is all-inclusive. I am sure it can and will be improved upon materially; however, it will serve as a basis for our supervisors to achieve a high degree of effectiveness if followed.

We will, of course, appreciate any comments or suggestions you may have from time to time for improving this scheduled outline of activity.

/O. W. Miller
O. W. MILLER

OWM:ekd
DAS (LA)
JLA (NY)
EX & GEN STAFF

PLAINTIFFS'

EXHIBIT 41

T E X A C O

March 8, 1976

John Dompier Oil Co.
N. 407 Madelia
Spokane, Washington 99202

Gentlemen:

Texaco distributors have traditionally played an important role in our company's distribution system; however, because many Texaco distributors have dramatically increased their volume of sales over the past several years, and particularly over the past several months, we are concerned about our ability to supply this large volume of product, and we are concerned about whether these Texaco wholesalers are supporting these sales with the type of wholesaler services that further the general acceptance of the Texaco brand.

During each month that we have supplied an unlimited allocation of product, we have advised you that such unlimited quantities were only being made available for that particular month. We wish to make it clear to you again so that you are not mislead into taking on or keeping present volumes on the erroneous assumption that we will necessarily meet those needs in the future.

If you have any questions regarding this matter, we will be happy to discuss it further with you.

Yours very truly,

W. E. NUNNENKAMP

Division Marketing Manager

WEN-RM

bcc: FHS

PLAINTIFFS'

EXHIBIT 98

7-23-73

O W MILLER

PTLD

FILE

CAPACITY OF TANK STORAGE BY PRODUCT JOHN DOMPIER BULK PLANT AS FOLLOWS:

7-41-5

1 -	10,000 GAL	FIRE CHIEF
1 -	6,000 "	SKY CHIEF
2 -	10,000 "	DIESEL #2
1 -	6,000 "	STOVE OIL

L T BOLLINGER

FORM S-21 | PLAINTIFFS'

DR 4-66 | EXHIBIT 134

63-624-023401

APPLICATION FOR ALLOWANCE BASED ON PUMP METER READINGS

No. 04934

Spokane 11-30-72

PRICE ADJUSTMENT

63275JAN251973

Below is a record of the volume of sales of Texaco Sky Chief and/or Fire Chief * * * , based on pump meter readings from each dealer supported by copies attached of forms signed by each dealer, on which /__/ I /__/ we request allowance * * *

			DATE		GALLONS	
	DEALER NAME AND TOWN		START	END	SKY	FIRE
Zone						
1	Francis Maerk	Spokane	11-17	11-21	933	2103
	x	x	11-21	11-28	1656	4505
* * *	Texaco Ser	Spokane	11-17	11-21	906	2295
	x	x	11-21	11-25	1374	4975
* * *	Wittrock	Spokane	11-17	11-21	115	560
* * *	x x	x	11-21	11-25	215	1440
* * *	"T" Bird Service	Spokane	11-17	11-30	3021	4408
* * *	Gary Evans	Spokane	11-17	11-30	7592	18636
6	Texaco Car Wash#2	Spokane	11-17	11-30	14662	25527

15	Texaco Gas Market Spokane	11-17	11-30	27748	57251
17	Red Carpet Car Wash #2 x	11-17	11-30	5285	8854
7	Red Carpet Car Wash #1 x	11-17	11-30	6583	9253
	TOTAL (Each Product)			70090	139810

DEALER NAME AND TOWN			RATE	ALLOWANCE SKY	ALLOWANCE FIRE
Zone					
1	Francis Maerk	Spokane	$ 0052	4.85	10.94
	x	x	0052	8.61	23.43
* * *	Texaco Ser	Spokane	0052	4.71	11.95
	x	x	0052	7.14	25.87

* * *	Wittrock	Spokane	0052	.60	2.91
* * *	x x	x	0052	1.12	7.49
* * *	"T" Bird Service	Spokane	0052	15.71	22.92
* * *	Gary Evans	Spokane	0052	39.48	96.91
6	Texaco Car Wash#2	Spokane	0052	76.24	132.74
15	Texaco Gas Market	Spokane	0052	144.29	297.71
17	Red Carpet Car Wash #2 x		0052	27.48	46.04
7	Red Carpet Car Wash #1 x		0052	34.23	48.12
	TOTAL (Each Product)			364.46	727.03
	Sky Chief Allowance Requested				364.46
	Total Allowance Requested				1091.49

I /__/ We /XX/ certify that the information shown above is true and correct and represents sales made by the dealers listed from Texaco products delivered to them by me /__/ us /XX/. I /__/ We /XX/ agree to maintain my /__/ our /XX/ record of deliveries of Texaco products to such dealers and of their pump meter readings. I /__/ We /XX/ further agree to permit a representative of Texaco Inc. to inspect such records and/or pump meter readings at any time during reasonable business hours in order to verify the gallonage upon which I /__/ We /XX/ request assistance. I /__/ We /XX/ further agree to refund to Texaco Inc. the amount of any allowance granted to me

/__/ us /XX/ as a result of any errors or inaccuracies.

/__/ MAIL CHECK /XX/ APPLY TO ACCOUNT JOHN DOMPIER OIL CO.

N. 407 Madelia St.

Spokane, Wash.

/J.K. Dompier

I certify the information shown herein conforms to that furnished on supporting Forms S-21 (DM) and that "Rate of Allowance" specified was in effect on and between "Start" and "End" dates of Pump Meter Readings. To the best of my knowledge and belief, this

request is a proper one, and, accordingly, I recommend approval.

/T. L. Carey	12-31-72
District * * *	Date

APPROVED:

/P. Mark FW	1-5-73
* * *	Date

0 526

12-12-72

Zone 6

MEMORANDUM - GENERAL ALLOWANCE
METER READING REPORT

Texaco Car Wash #2
Sav-All Gas Inc.
N.

Period of Report	
Started	Ended
11-17-72	11-30-72

PUMP METER READINGS

Sky Chief Pump No.	Start	End	Fire Chief Pump No.	Start	End
1			1	84371	96793
2	96337	3443	2		
3	41495	49051	3		
4			4	26945	40050
5			5		
6			6		
Totals	137832	52494	Totals	111316	136843
Adj.		100000	Adj.		
Adj. End Total		152494	Adj. End Total		136843
Less		137832	Less		111316
Net Sales-Gallons		14662	Net Sales-Gallons		25527

I certify the above meter readings to be true and correct and agree to promptly refund to seller the amount of allowance given as a result of errors in this report.

/Ray Koziuk

(Signature of Dealer)

The above total credit was applied to Invoice No. 74603 dated 12-12 1972

By: /J.K. Dompier

Representing

0 535

11-30-72

Zone 15

MEMORANDUM - GENERAL ALLOWANCE
METER READING REPORT

Texaco Gas Market
N. 2924 Market, Spokane, Wash.

Period of Report

Started	Ended
11-11-72	11-30-72

PUMP METER READINGS

Sky Chief			Fire Chief		
Pump No.	Start	End	Pump No.	Start	End
1			1	23088	40881
2	95746	2620	2		
3			3	67330	83819
4	54766	63769	4		
5			5	13260	36229
6	21057	32928	6		
Totals	171569	99317	Totals	103678	160929
Adj.		100000	Adj.		
Adj. End Total		199317	Adj. End Total		160929
Less		171569	Less		103678
Net Sales-Gallons		27748	Net Sales-Gallons		57251

I certify the above meter readings to be true and correct and agree to promptly refund to seller the amount of allowance given as a result of errors in this report.

/R.W. Harder

(Signature of Dealer)

The above total credit was applied to Invoice No. 74723 dated 12-16 1972

By: /J.K. Dompier

Representing

0 536

11-30-72

Zone 17

MEMORANDUM - GENERAL ALLOWANCE
METER READING REPORT

Red Carpet Car Wash #2
E. 7208 Sprague Ave.
Spokane, Wash.

Period of Report
Started 11-17-72 Ended 11-30-72

PUMP METER READINGS

Sky Chief Pump No.	Start	End	Fire Chief Pump No.	Start	End
1	99193	3509	1		
2			2	54056	58510
3			3	90564	92917
4	67397	68366	4		
5			5	58662	60709
6			6		
Totals	166590	71875	Totals	203282	212136
Adj.		100000	Adj.		
Adj. End Total		171875	Adj. End Total		212136
Less		166590	Less		203282
Net Sales-Gallons		5285	Net Sales-Gallons		8854

I certify the above meter readings to be true and correct and agree to promptly refund to seller the amount of allowance given as a result of errors in this report.

/J.K. Dompier

(Signature of Dealer)

The above total credit was applied to Invoice No. 74724 dated 12-16 1972

By: /J.K. Dompier

Representing

0 537

11-30-72

Zone 7

MEMORANDUM - GENERAL ALLOWANCE
METER READING REPORT

Red Carpet Car Wash #1
N. 2725 Division
Spokane, Wash.

Period of Report
Started 11-17-72 Ended 11-30-72

PUMP METER READINGS

Sky Chief Pump No.	Start	End	Fire Chief Pump No.	Start	End
1	16851	20244	1		
2			2	22699	26146
3	63310	65784	3		
4			4	20477	24961
5			5	23726	25048
6	5559	6275	6		
Totals	85720	92303	Totals	66902	76155
Adj.			Adj.		
Adj. End Total		92303	Adj. End Total		76155
Less		85720	Less		66902
Net Sales-Gallons		6583	Net Sales-Gallons		9253

I certify the above meter readings to be true and correct and agree to promptly refund to seller the amount of allowance given as a result of errors in this report.	The above total credit was applied to Invoice No. 74725 dated 12-16 1972
/J.K. Dompier	By: /J.K. Dompier
(Signature of Dealer)	Representing

0 538

63-624-003401

APPLICATION FOR ALLOWANCE BASED ON PUMP METER READINGS

No. 04936

Spokane, Wash. 12-31-72

PRICE ADJUSTMENT

Below is a record of the volume of sales of Texaco Sky Chief and/or * * * , based on pump meter readings from each dealer supported by copies attached of forms signed by each dealer, on which /__/ I /XX/ we request * * * below:

	DATE		GALLONS	
DEALER NAME AND TOWN	START	END	SKY	FIRE
Zone				
15 Texaco Gas Market Spokane	12-1	12-12	27752	51021
x	12-12	12-31	44318	91808
2 Gary Evans Spokane	12-1	12-31	19883	40611
6 Texaco Car Wash #2 Spokane	12-1	12-20	19957	35917
x	12-20	12-31	12339	23691
TOTAL (Each Product)			124249	243048

		ALLOWANCE	
DEALER NAME AND TOWN	RATE	SKY	FIRE
Zone			
15 Texaco Gas Market Spokane	0052	144.31	265.31
x	0087	385.57	798.73
2 Gary Evans Spokane	0052	103.39	211.18
6 Texaco Car Wash #2 Spokane	0052	103.78	186.77
x	0087	107.35	206.11
TOTAL (Each Product)		844.40	1668.18
Sky Chief Allowance Requested			844.40
Total Allowance Requested			2512.58

I /__/ We /XX/ certify that the information shown above is true and correct and represents sales made by the dealers listed from Texaco products delivered to them by me /__/ us /XX/. I /__/ We /__/ agree to maintain my /__/ our /XX/ record of deliveries of Texaco products to such dealers and of their pump meter readings. I /__/ We /XX/ further agree to permit a representative of Texaco Inc. to inspect such records and/or pump meter readings at any time during reasonable business hours in order to verify the gallonage upon which I /__/ We /XX/ request assistance. I /__/ We /XX/ further agree to refund to Texaco Inc. the amount of

any allowance granted to me /__/ us /XX/ as a result of any errors or inaccuracies.

/__/ MAIL CHECK /XX/ APPLY TO ACCOUNT <u>JOHN DOMPIER OIL CO.</u>
<u>N. 407 Madelia St.</u>
<u>Spokane, Wash.</u>
<u>/J.K. Dompier</u>

I certify the information shown herein conforms to that furnished on supporting Forms S-21 (DM) and that "Rate of Allowance" specified was in effect on and between "Start" and "End" dates of Pump Meter Readings. To

the best of my knowledge and belief, this request is a proper one, and, accordingly, I recommend approval.

/T. L. Carey	1-18-73
District * * *	Date

APPROVED:

/R. Ward	1-22-73
* * *	Date

0 539

12-31-72

Zone 6

MEMORANDUM - GENERAL ALLOWANCE
METER READING REPORT

Texaco Car Wash #2
Sav All Gas, Inc.
N. 3306 Monroe, Spokane, Wash.

Period of Report

Started	Ended
12-1-72	12-20-72

PUMP METER READINGS

Sky Chief Pump No.	Start	End	Fire Chief Pump No.	Start	End
1			1	96793	14863
2	3443	12372	2		
3	49051	60079	3	40050	57897
4			4		
5			5		
6			6		
Totals	52494	72451	Totals	136843	72760
Adj.			Adj.		100000
Adj. End Total		72451	Adj. End Total		172760
Less		52494	Less		136843
Net Sales-Gallons		19957	Net Sales-Gallons		35917

I certify the above meter readings to be true and correct and agree to promptly refund to seller the amount of allowance given as a result of errors in this report.	The above total credit was applied to Invoice No. 74699 dated 12-30 1972
/Ray Koziuk	By: /J.K. Dompier
(Signature of Dealer)	Representing

0 543

12-30-72

Zone 6

MEMORANDUM - GENERAL ALLOWANCE
METER READING REPORT

Texaco Car Wash #2
Sav All Gas, Inc.
N. 3306 Monroe, Spokane, Wash.

Period of Report
Started 12-20-72 Ended 12-31-72

PUMP METER READINGS

Sky Chief Pump No.	Start	End	Fire Chief Pump No.	Start	End
1			1	14863	26733
2	12372	17961	2		
3	60079	66829	3		
4			4	57897	69718
5			5		
6			6		
Totals	72451	84790	Totals	72760	96451
Adj.			Adj.		
Adj. End Total		84790	Adj. End Total		96451
Less		72451	Less		72760
Net Sales-Gallons		12339	Net Sales-Gallons		23691

I certify the above meter readings to be true and correct and agree to promptly refund to seller the amount of allowance given as a result of errors in this report.

/Ray Koziuk
(Signature of Dealer)

The above total credit was applied to Invoice No. 74699 dated 12-30 1972

By: /J.K. Dompier
Representing

0 544

PLAINTIFFS'

EXHIBIT 202

TEXACO

LONG RANGE PLAN

1977-1981

MARKETING DEPT.--U.S.

* * *

MARKETING DEPARTMENT-U.S.
LONG RANGE PLAN
5 YEARS 1977 - 1981

SALES OBJECTIVES - AVAILS

Sales objectives for gasoline, middle distillates and residual fuel oils will be determined annually on the basis of avails. Exhibit I attached is a forecast of the avails for each of the product categories through the year 1981.

These forecasts are based on Texaco's equity manufacturing system plus firm processing arrangements and move toward minimizing of "outside" product purchase and product imports.

Exhibits Ia and Ib show areas of growing market potential for middle distillates and residual fuel oils.

Exhibit II is a comparison of Texaco with other major competitors showing sales versus equity refining capacity. It indicates the necessity in future years for Texaco to relate its sales objectives on gasoline and middle distillates to be balanced more closely with equity avails; it follows that marketing should concentrate in areas preferential to equity refinery sources in order to be competitive in product supply <u>and</u> <u>distribution</u> <u>cost</u>.

The sales objectives on other products will be determined annually by sales management.

<u>EXHIBIT VI (cont'd.)</u>
<u>MARKETING DEPARTMENT-U.S.</u>
LONG RANGE PLAN
5 YEARS 1977 - 1981

* * *

II. <u>THE MARKETING PROBLEM</u>

The problem facing Texaco, other major oil companies and some non-major integrated marketers is the competitive pressure on margins and profits in the traditional Class-Of-Trade marketing structure, i.e., Wholesalers, Retailers and Consumers. Competitive pump prices will no longer support both the wholesaler margin and a viable retailer profit on gasoline.

The narrowing rack to pump price differential is causing numerous changes in marketing practices by the Wholesale and Retail Classes of Trade.

<u>WHOLESALERS</u> are adding Salary Retail Operation to their function and melding the retail profit with their wholesale margin in order to post a pump price

competitive with Independents, Private Branders and other Major Wholesalers also marketing as retailers. This retailing is often on a self-serve basis.

Wholesalers are also placing retailers on a commission basis, particularly in self-serve locations and frequently developing convenience store self-serve outlets eliminating all manpower expense in gasoline sales. This can result in a pump pride as low as 3¢ to 4.5¢ above the wholesalers' buying price and often as low as the competitive independents' pump price.

Some wholesalers are selling retailers at significant discounts to assist them in being competitive at the pump and maintaining volume often taking the hauling allowance and little more as their wholesale profit.

<u>RETAILERS</u>, buying at Dealer Tankwagon Price, are facing this rack to

pump competition with increasing difficulty. This is a very real problem for Lessee Retailers who may also be paying a gallonage rental for their station and which, from their viewpoint, increases the buying price by that amount, usually 1.5¢ to 2¢.

Retailers have attempted various solutions:

1. Lowered their pump price, absorbing the loss in profit down to 4¢ or 5¢ above their D.T.W. cost.

This is still 8¢ to 9¢ above the wholesalers' buying price and they are 4¢ to 5¢ above the street pump postings.

2. Retailers have moved in significant numbers to split-island self-serve operation with some volume improvement, but still not being sufficiently competitive to maintain sales in the long term.

3. Some retailers have gone completely self-serve but, here again, they can be competitive only to a degree.

4. Many retailers, including most Lessee Retailers, have continued to post prices reflecting their traditional profit resulting in a drop in sales. This is the principle cause of the decline in thruput in stations operated by Texaco Lessee Retailers. Apparently this is true of other major company lessee retailers also.

Why Rack Pricing?

The concept of Rack Pricing for major oil companies could be one solution to the volume and profit decline of the retailer class of trade.

It is actually a reduction from the present D.T.W. buying price to a price level related to the commodity value of gasoline in a free competitive market; or, it could be viewed as an increase in

the wholesaler buying price (reduction in margin) relative to the retailer buying price.

A Branded supplier could post rack prices above unbranded rack postings if the marketing value of the Brand is strong and can demonstrate a "performance" value in the free marketplace.

III. HISTORIC AND CURRENT TRENDS

Historically, many independent refiners and some secondary majors, such as Ashland, have used "rack" or "dock" pricing as it suited their marketing methods.

Marathon uses a combination of "rack" and "functional" pricing in that they price differently for various types of buyers at the dock, such as:

Unbranded and Non-contract

Unbranded contract

Branded Non-Stocking

Branded with Bulk Plant Storage

The trend with majors is generally dated from 1971 when "rack" pricing was introduced for Branded Distributors by Citgo in North Carolina and by Continental in the Rio Grande Valley in Texas. The announced intent at that time, by these Companies, was to find an alternate method of pricing distributors to eliminate the substantial allowances common in the Industry because of depressed retail prices.

* * *

PLAINTIFFS'

EXHIBIT 215

Spokane August 5, 1975

ALLOCATION PROGRAM

JOHN DOMPIER OIL

6.20

Mr. R. E. Bauman

Spokane

In response to your request for my recommendation relative to: (1) increased allocation for above account; (2) proposed supply of Mission and Magnolia station; and (3) general trend concerning method of marketing and growth pattern of above account in relation to general marketing of Texaco products in Spokane, the following brief synopsis of marketing in Spokane since my assignment is submitted:

John Dompier Oil Company became a Texaco Distributor in Spokane in 1961. My assignment to District Sales

Supervisor in Spokane became effective January, 1970. At that time Mr. Dompier supplied six retail accounts averaging a total of 155,152 gallons per month. 242 Spokane supplied 27 investment accounts averaging 21,084 gallons each, and Carl Schreck supplied four contract retail accounts averaging 25,365 gallons each. Of Dompier's six accounts, two were wholly owned Dompier car wash outlets.

In 1971 Mr. Dompier began negotiations to supply and brand to Texaco several selected "Big West" retail outlets. At this time Spokane District Management approved Mr. Dompier supplying these accounts; however, I insisted that I personally inspect the proposed locations and counsel with Dompier as to acceptability of this representation according to Texaco standards. Mr. Dompier subsequently turned down supply to

three proposed accounts, and served one remaining account.

From 1971 to date, as District Sales Supervisor, I have continually attempted to maintain a very close, cooperative association with Dompier Oil Company to insure that Texaco operations retail-wise in Spokane are maintained with a reasonable marketing balance between Distributor supplied volume, Tank Truck Dealer supplied volume, and salaried bulk plant supplied volume, to insure Texaco a maximum profit posture in relation to a distribution pattern to insure adequate brand coverage in Spokane. The following is a breakdown of the history of this balance/volume retail relationship in Spokane from 1970 to date.

As to the above-mentioned "Big West" episode, it was mentioned as it was the first time Dompier had actively sought

to accelerate their growth in the Spokane market.

VOLUME HISTORY--RETAIL MARKETING--SPOKANE

Name	# Accts	Total Vol./Mo.	Name	# Accts	Total Vol./Mo.
1970			1971		
TTDlr	4	25,365	TTDlr	6	151,835
Dompier	6	155,152	Dompier	8	272,057
Thruput	27	569,269	Thruput	27	630,855
1972-Commence Voluntary Alloc.			1973-Commence Mandatory Alloc.		
TTDlr	6	79,566	TTDlr	6	102,753
Dompier	7	455,025	Dompier	8	433,077
Thruput	26	590,408	Thruput	28	621,180

1974			1975 - 6 Mos.		
TTDlr	5	85,844	TTDlr	4	76,151
Dompier	8	457,038	Dompier	8	462,956
Thruput	22	523,270	Thruput	19	389,557

The above resume of volumes indicates that a large growth in volume occurred with our Distributor in 1972. This was primarily due to the type of retailing done by accounts supplied by Dompier. By and large, Dompier switched from supplying traditional full serve accounts to complete selfserve operations based on price retailing. Through our close rapport with our Distributor from 1971 to date we managed to counsel Dompier in <u>not</u> aggressively soliciting and supplying new accounts in Spokane, especially those in close proximity to existing 3rd Party accounts. The survey indicates, 1970 to date, Dompier has increased accounts supplied by a net of two. Volume increases have generally come from changes in methods of retailing.

<u>Exhibit 1</u> - Our Distributor has asked for and received several

adjustments in allocations during the period of the Mandatory Allocation Program to date to account for various increases in volumes required by accounts due to updating of their methods of retailing.

Until March, 1975, Mr. Dompier's retail accounts included two carwashes and one full serve owned by him. Five locations were owned by others over which Dompier had no control as to when or where they purchased their brand of gasoline. In March of this year Dompier purchased outright two of the locations he supplied, that were owned by R. Koziuk; one he supplied owned formerly by Walker Enterprises and has a financial interest in one other unit. Thus he has total control of six of the eight units he supplied, and strong control of one other.

<u>Exhibit 2</u> - Presently Dompier is negotiating to purchase outright a new account, which has been in operation one month as a Texaco contract retailer under FEA allocation commitment as such. If the transaction is consummated this will result in Dompier wholly owning seven units, partially one additional, and supplies to one non-owned unit, for a total of nine.

Due to the above mentioned recent transactions, Mr. Dompier is requesting additional allocation adjustments to accommodate the increased volume needs.

<u>Exhibit 3:</u>

1. To accommodate for product to be supplied to the two former Ray Kozuik stations which product in part may have formerly been purchased by Mr. Koziuk from sources other than Dompier.

2. To accommodate for increased volume needed to supply the purchased

accounts, Wolfe Enterprises, the presently operated contract retailer account.

Approval of all of Dompier's allocation requests per Exhibit 3, would result, in my opinion, in the following:

1. Materially shift the balance of product supplied by Texaco Inc. in Spokane at retail from a balance between TTDlr volume/contract retailer volume/ thruput and Distributor which is now generally on an equal footing, to an over balance of 60% Distributor volume versus the rest, with resultant obvious consequences to Texaco's long term investment commitments in Spokane and losses in revenue. This estimated shift would result in approximately 400,000/ month average 1975 investment thruput plus 76,000/month TTDlr volume versus Distributor volume averaging 604,000 per month. In addition, Dompier would

achieve a net increase of one unit to nine accounts, eight of which are owned by the Distributor and operated on self serve basis, pricing generally \$.05 to \$.10 below full serve investment units in Spokane and with a technical cost/RTW spread of \$.0365 per gallon. This would categorically allow our Distributor a retail marketing advantage over our present contract retailer and investment retailers with which they cannot compete.

2. Allowing Dompier to supply as a Distributor the present Mission and Magnolia contract retailer account, which Dompier proposes to purchase, will cost Texaco approximately \$.02/gallon revenue or \$31,920 per year based on present estimates of volume times the differential between RTW and Distributor TW, and will over balance the Distributor-Investment accounts-Contract Retailer marketing posture in Spokane to a

heavily volume oriented Distributor posture.

Taking into account that Dompier has in fact also been given allocation increase adjustments five times in the past year, and to date has left 741,116 gallons unused allocation "on the table", (this figure is an estimate based on latest adjustment in March, 1975 to base year of 6,578,346 versus sales to date of 2,918,615 and estimates for the balance of the year). Thus, in essence Dompier is asking for a total for 1975 allocation of 8,278,338 for this, or 689,861 per month versus a present proved need of 486,435 based on sales to date plus 52,080 projected volume of Mission and Magnolia station (based on first month's operation). This is a total actual need of 538,515 per month. Our Distributor requests 689,861 per month thus giving him

151,345 surplus each month with which to experiment price-wise to increase volume, to acquire new accounts, etc.

It is my recommendation based on the above facts and projections that our Distributor be advised:

1. FEA 17 allocation for Mission and Magnolia is based on contract retailer operation with allocation being assigned to Texaco Inc. location and not a pass through to Distributor.

2. Texaco Inc. continue supplying Mission and Magnolia as a contract account regardless of who owns the property.

3. Mr. Dompier's allocation not be subject to readjustment until such time as the differential between present allocation and actual sales be reduced to zero.

4. Aggressively seek higher Management's specific policy direction as to

the method of marketing in a metro area (volume versus long term lease commitment) to develop in line with basic Exxon exchange supply factors, etc.

It is hoped the above will be of value in ~~your~~ recommendations.

R. J. VOGELMAN

RJV:rlo'c

EXHIBIT 1

JOHN DOMPIER OIL CO.

GASOLINE

1972	5,460,300
Adjusted 3/17/74 to	5,615,568
Adjusted 5/22/74 to	5,879,970
Adjusted 5/6/74 for	
303 Third to: May	59,275
June	80,800
July	69,600
3/3/75 Adjusted to	6,578,346

Sales:	1972	5,460,300	
	1973	5,196,930	
	1974	5,525,833	.06%
	1975 to date	2,918,615	(this rate-5,837.230)

1975 Allocation vs. sales:

	Allocation	Sales
January	445,500	476,805
February	390,000	474,080
March	556,780	508,630
April	510,055	518,950
May	606,631	451,700
June	577,781	488,450

Texaco:

1972	80,154,512	
1973	80,072,515	.1% Decrease
1974	78,516,255	2.1% Decrease

EXHIBIT 2

<u>WOLFE ENTERPRISES</u>

Open - 7/9/75		
June -	8,600	6-26-75
July -	<u>25,200</u>	7-23-75
	33,800	

1. Average Inc. June Purchases: $\frac{33800}{15}$ = 2253

   7/9/75 thru 7/23/75

   Extrapolated volume - 31 days July

   31 x 2253 = 69,843

2. Average - Exclude June Purchases - 1680

   7/9/75 thru 7/23/75

   Extrapolated volume - 31 days July

   31 x 1680 = 52,080

EXHIBIT 3

J O H N   D O M P I E R   OIL COMPANY, INC.

North 407 Madelia Street
Spokane, Washington 99202
July 21, 1975

Texaco Inc.
T A Box 2625
Spokane, Wa.

Attention Mr. R. E. Bauman:

Gentlemen:

The accompanying request for an increase of 141,666 gallons per month in our BPV is for the purpose of supplying our newly acquired location on East Mission.

You will note that in the past twelve months we have not drawn 644,153 that has been allocated to us, amounting to approximately 10% of our total allocation. This 644,153 gallons will be needed to supply the additional product needed for the location on N. 502 Freya. Based on the information

available, Ray Kozuik purchased approximately 655,000 gallons from outside sources during this same period and this should account for more than the gallons we "left on the table" in the past twelve months.

We feel that the allocation adjustment for the purpose of supplying the location on Mission is a reasonable figure for the area. We purchased the station from Gary Wolfe when it became apparent that he intended to sell it and that if we did not buy it, the location would probably go to someone who would put in another brand of gasoline. This is approximately the gallonage that Texaco had allocated Gary Wolfe and would in no way change the supply situation in Spokane, but would simply result in a transfer of the allocation from Gary Wolfe to John Dompier Oil Company, inc.

Very truly yours,
JOHN DOMPIER OIL CO., INC.
/J. N. Dompier
J. N. Dompier, Pres.

JND:m
Enc.

PLAINTIFFS'

EXHIBIT 385

1. CIRCLE S. DISTRIBUTING CO.
   (Dick Snyder)
   E. 936 Sprague
   Spokane
   Supply only - no written agreement - discontinued purchases from Gull Dec. 1975.
   Volume Purchased:

1970 - 339,550	1971 - 352,700
1972 - 296,700	1973 - 282,450
1974 - 257,011	1975 - 179,850

2. HERITAGE OIL CO.
   1106 N. Pines Rd.
   Spokane
   Supply only - no written agreement - discontinued purchases from Gull May, 1972.
   Volume Purchased:

1970 - 487,400	1971 - 687,795
1972 - 242,100	

3. HERITAGE & ROBERTS
   (Sherman D. Monger)
   E. 706 Main St.
   Cheney
   Supply only - no written agreement - discontinued purchases from Gull May, 1972.
   Volume Purchased:

1970 - 348,552	1971 - 346,865
1972 - 101,600	

4. PAUL GREIG
   Rtl Box 199-A
   Medical Lake
   (He also supplied a station at Broadway & Nettleton, Spokane but we have no gallonage separated by location or period supplied)
   Supply only
   Supply only - no written contract - purchased from Gull beginning in November, 1971; discontinued

purchasing from Gull in September, 1975.

Volume Purchased:

1971 - 8530	1972 - 177,056
1973 - 333,960	1974 - 493,500
1975 - 156,250	

5. R & E DEVELOPMENT CO.
(Mr. & Ms. Roy Walker)
E. 8006 Sprague
Spokane

Gull leased station from Walkers 10-15-65. Lease expired 10-14-75. Subleased to dealer (E. L. Stanley). Product was consigned.

Volume Purchased:

1970 - 356,950	1971 - 345,875
1972 - 343,885	1973 - 347,643
1974 - 334,004	1975 - 211,470

6. JAMES J. SWARTZ
E. 422 Sprague Ave.
Spokane

Lease cancelled 4-15-70. Total volume sold 1970 - 37,200.

7. MIKE McKAY
So. 3728 Grand Blvd.
Spokane

Station was leased by Gull and subleased to dealer. Product was consigned. Station was closed 11-20-72.

Volume:

1970 - 230,150	1971 - 418,671
1972 - 300,645	

8. FRANCIS AVENUE GULL
E. 620 Francis
Spokane

Station was originally leased from Briggs 10-1-66. Purchased from Briggs Estate 10-15-71, subsequently owned by Gull until station closed 7-31-78 upon sale of property by Gull. Station leased to dealer on commission basis.

Volume:

1970 - 635,200   1971 - 538,745

1972 - 580,890   1973 - 467,825

1974 - 464,780   1975 - 530,875

1976 - 610,147   1977 - 313,500

1978 - 171,025

9\. TRENTWOOD GULL

E. 13819 Trent

Spokane

Station owned by Gull, leased to dealer. Product was consigned to dealer until October, 1975, when station was converted to self-service. Dealer was on commission basis after conversion.

Volume:

1970 - 488,560   1971 - 614,285

1972 - 496,570   1973 - 482,650

1974 - 528,600   1975 - 577,257

1976 - 971,175   1977 - 884,945

1978 - 765,316 (8 mos.)

10\. RICHARD SHANE

N. 2103 Division

Spokane

Station owned by Gull, leased to dealer. Product was consigned to dealer until September, 1975, when station was rebuilt and converted to self-service. Dealer on commission basis after conversion.

Volume:

1970 - 476,950   1971 - 578,685

1972 - 712,215   1973 - 559,160

1974 - 498,261   1975 - 477,525

1976 - 848,477   1977 - 688,475

1978 - 466,163 (8 mo.)

11\. ARGONNE GULL

N. 1521 Argonne

Spokane

Station leased by Gull from Sisco 6-1-69, purchased by Gull from Sisco 5-15-75. Leased to dealer with product consigned until September,

1975, when station was rebuilt and converted to self-service. Dealer on commission basis after conversion.

Volume:

1970 - 279,600	1972 - 242,754
1971 - 302,975	1973 - 229,619
1974 - 362,251	1975 - 430,930
1976 - 833,020	1977 - 687,131
1978 - 528,950 (8 mo.)	

12. MEAD GULL

Pend O'Reille Highway

Mead, Wash.

Station owned by Gull, leased to dealer. Station opened 7-22-71 and was operated on commission basis since opening.

Volume:

1971 - 238,050	1972 - 643,665
1973 - 756,473	1974 - 814,950
1975 - 866,060	1976 - 1,036,710
1977 - 939,010	
1978 - 718,591 (8 mo.)	

13. VALU-MART (Fred Meyer)

E. 511 Francis Ave.

Spokane

Property leased by Gull. Station subleased to dealer. Station opened in October 1972. Operated on commission basis since opening.

Volume:

1972 - 262,850	1973 - 572,150
1974 - 745,923	1975 - 984,440
1976 - 1,190,941	1977 - 908,935
1978 - 699,158 (8 mo.)	

14. VALU-MART (Fred Meyer)

E. 5204 Sprague

Spokane

Property leased by Gull, station subleased to dealer. Station opened in May, 1972. Operated on commission basis since opening.

Volume:

1972 - 583,161	1973 - 801,544
1974 - 835,651	1975 - 993,594

1976 - 1,002,709   1977 - 888,719

1978 - 700,718 (8 mo.)

15. MANITO GULL

S. 3805 Grand

Spokane

Owned by Gull (acquired 6/72), leased to dealer. Station opened in December, 1972. Operated on commission basis since opening.

Volume:

1972 - 50,065   1973 - 519,113

1974 - 714,068   1975 - 906,060

1976 - 1,003,030   1977 - 765,499

1978 - 557,987 (8 mo.)